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ABSTRACT

Testimony, prepared statements, letters, and supplemental materials presented by 26 members of the administration and Indian leaders and/or groups from across the country are reproduced in these proceeding of a hearing on H.R. 5190, a bill to amend Title XI of the Education Amendments of 1978. The proposed amendments deal with educational programs operated or funded by the Bureau of Indian Affairs and were developed to foster better educational services for Indian students and more local tribal control of vital education services. Hearing input provides support for, and objections and proposed changes to, individual amendment sections on minimum academic standards, school closures, school boundaries, Bureau of Indian Affairs education functions, allotment formulas, uniform direct funding, appeals from actions of school boards, management information systems, audit, regulations, and voluntary services. (NEC)

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THE INDIAN EDUCATION AMENDMENTS OF 1984

ED250143

HEARING

BEFORE THE

SUBCOMMITTEE ON ELEMENTARY, SECONDARY, AND VOCATIONAL EDUCATION

OF THE

COMMITTEE ON EDUCATION AND LABOR HOUSE OF REPRESENTATIVES

NINETY-EIGHTH CONGRESS

SECOND SESSION

ON

H.R. 5190

TO AMEND TITLE XI OF THE EDUCATION AMENDMENTS OF 1978 RELATING TO INDIAN EDUCATION, AND FOR OTHER PURPOSES

HEARING HELD IN WASHINGTON, DC, ON APRIL 9, 1984

Printed for the use of the Committee on Education and Labor

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THE INDIAN EDUCATION AMENDMENTS OF 1984

MONDAY, APRIL 9, 1984

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON ELEMENTARY, SECONDARY,
AND VOCATIONAL EDUCATION,
COMMITTEE ON EDUCATION AND LABOR,
Washington, DC.

The subcommittee met, pursuant to call, at 10 a.m., in room 2337, Rayburn House Office Building, Hon. Dale E. Kildee presiding.

Members present: Representatives Kildee and Gunderson.

Staff present: Jeff McFarland, Janet Ferguson, Lisa Worthington, and Alan Lovesee, majority staff; Rich DiEugenio, Republican senior legislative associate.

Mr. KILDEE. The subcommittee will come to order.

This morning the Subcommittee on Elementary, Secondary, and Vocational Education is conducting a hearing on H.R. 5190, a bill to amend title XI of the amendments of 1978. The bill which I introduced on March 20, 1984, amends provisions of title XI dealing with educational programs operated or funded by the Bureau of Indian Affairs.

It is a result of 5 years of monitoring the Bureau's implementation of the 1978 amendments. It comes from oversight hearings, visits to and with trial leaders, and Indian educational professionals in my own experiences during visits to Bureau-operated and quality controlled contract schools earlier this year. It was developed with the twin philosophies of fostering better education services for Indian students and more local tribal control of vital education services.

Before we begin, I would like to stress that the bill is not a reflection of any administrator or administration. It is simply an effort to strengthen the Bureau's administrative support of education, and that is the purpose and the intent of this bill. We wish to work with the Bureau to meet our shared responsibilities to serve the Indians of this Nation, particularly in this very vital area of education.

I always tell my friends, both Indians and non-Indians, that when we dealt with the Indian nations and tribes of this country, we did not deal with them well. However, when we did sign treaties with them, almost universally the one element that the U.S. Government promised in those treaties was education. So while we are obligated both morally, legally, and in accord with those treaties to the Indian nations, Indian tribes, and Indian people of this Nation, we have a particular obligation in the field of education.

This very often became the quid pro quo in the treaties we signed with the Indian nations. They gave up tremendous rights, gave up vast tracts of land, and the one thing that they were promised in return was education, and that promise was made by the U.S. Government. That is the entire U.S. Government. Those treaty responsibilities and that trust responsibility resides not just in the Interior Department, not just with the BIA, but with the entire U.S. Government, including the Congress of the United States.

So as long as I am a Member of this Congress, I want to do all I can to make sure we do live up to our treaty responsibilities, and repair the damage that has resulted from the U.S. Government not living up to those treaty responsibilities in the past.

I would like to also assure all those who will testify today, and everyone concerned with the fulfillment of our Federal responsibility to Indian people, that this bill is offered as the basis for discussion. All my visits all my attendance at hearings can only give me a little more insight into the needs of Indian education. It is people like yourselves that really understand that need, so this bill has been introduced as the basis for discussion, as the beginning point and not the ending point.

I welcome and actively solicit input, suggested amendments, deletions, additions. I tell people that this bill is finally drafted on Capitol Hill and not Mount Sinai, so we have a great deal of room for additions and changes here, but what is good in the bill now is the result of input from people like yourselves, and our visits to the West and other parts of the country. I want to make this measure as responsive as possible to the concerns of all the interested parties.

[Text of H.R. 5190 follows:]

98TH CONGRESS
2D SESSION

H. R. 5190

To amend title XI of the Education Amendments of 1978 relating to Indian education, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 20, 1984

Mr. KILDEE introduced the following bill; which was referred to the Committee on Education and Labor

---

A BILL

To amend title XI of the Education Amendments of 1978 relating to Indian education, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE; REFERENCE

SECTION 1. (a) This Act may be cited as the "Indian Education Amendments of 1984".

(b) Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other

provision of title XI of the Education Amendments of 1978 (25 U.S.C. 2001 et seq.).

STANDARDS

SEC. 2. (a) Section 1121(b)(2) is amended by adding at the end thereof the following: "Such standards shall include a requirement, developed in coordination with Indian tribes, the affected local school boards, and the Indian Health Service of the Department of Health and Human Services, on immunization for childhood diseases, including provisions for in-school immunization, where necessary.".

(b) The first sentence of section 1121(d) is amended by striking out everything after "ill-conceived," and inserting in lieu thereof a period and the following: "The tribal governing body or designated school board shall thereafter submit to the Secretary a proposal for alternative standards that takes into account the specific needs of the tribe's children.".

(c) Section 1121(e) is amended—

(1) by inserting "(1)" after "(e)";

(2) by striking out the second sentence thereof; and

(3) by adding at the end thereof the following new paragraph:

"(2) Within two years of the initial contract for the provision of educational services under Indian Self-Determination and Education Assistance Act—

"(A) each such school shall (i) be in compliance with the standards prescribed under subsection (a), or (ii) have obtained accreditation, or be a candidate for accreditation, with one of the accrediting agencies recognized by the Secretary of Education or the State in which it is found; and

"(B) the Bureau shall, through contract with an appropriate national Indian organization, establish uniform fiscal control and fund accounting procedures for all contract schools comparable to those used by Bureau schools.".

(d) Section 1121(f) is amended by adding at the end thereof the following: "Failure to implement or meet such standards shall not serve as the basis for taking any personnel action against any individual if (1) the failure is related to inadequate resources (as determined under sections 1128 and 1129 of this title), and (2) the Secretary has not submitted the information required by this subsection and has not requested sufficient funds to cover the cost (as determined under such sections) of meeting such standards at the school concerned.".

(e) Section 1121 is further amended by redesignating subsection (g) as subsection (h) and by inserting after subsection (f) the following new subsection:

"(g)(1) Except as specifically required by statute, no school operated by the Bureau of Indian Affairs on January 1, 1984, may be closed or the program curtailed unless done according to the requirements of this subsection.

"(2) The Secretary shall, by regulation, promulgate standards and procedures for the closing or consolidation of Bureau schools in accordance with the requirements of this subsection.

"(3) Such standards and procedures shall require that, whenever closure or consolidation of a school is under consideration or review by any division of the Bureau or the Department of the Interior, the affected tribe, tribal governing body, designated local school board, and parents will be notified as soon as such consideration or review begins and kept fully and currently informed with respect to such consideration or review. Copies of any such notices and information shall be transmitted promptly to the Congress and published in the Federal Register.

"(4) Prior to ordering any such school closing or consolidation, the Secretary shall insure that a study is made of each Indian child's educational and (where applicable) social needs and that adequate alternative services are guaranteed. Such a study shall include a description of the consultation conducted between the potential service provider, current service provider, parents, tribal representative of the tribe

involved, and the Director of the Bureau of Indian Affairs, Office of Indian Education Programs with regard to such child.

"(5) Prior to taking any action to close or consolidate any such school, the Secretary shall make a full report to Congress describing the plans made (including schedules and plans for follow-up studies on the students affected), and the study and consultations undertaken pursuant to paragraph (4) of this subsection. No action may be taken in furtherance of any such proposed school closing or consolidation (including any action which would prejudice the personnel or programs of such school) until the end of the academic year following the academic year in which such report is made.".

SCHOOL BOUNDARIES

SEC. 3. Section 1124 is amended to read as follows:

"SCHOOL BOUNDARIES

"SEC. 1124. (a) The Secretary shall, in accordance with this section, establish separate geographical attendance areas for each Bureau school.

"(b) No attendance area shall be established with respect to any such school unless the tribal governing body or the local school board concerned (if so designated by the tribal governing body) has been given one year from the date of enactment of the Indian Education Amendments of 1984 to propose such boundaries. Such proposed boundaries shall

be accepted unless the Secretary finds, after consultation with such body or board, that such boundaries do not reflect the needs of the Indian students to be served or do not provide adequate stability to all of the programs affected.

"(c) In any case where more than one school operated by the Secretary is located on an Indian reservation, the attendance areas established under this section—

"(1) in the case of nonresidential programs, shall not overlap and shall, together, cover the entirety of such reservation;

"(2) shall be established after due consideration of relevant transportation costs;

"(3) shall, to the greatest extent possible, permit a student to continue his or her education at a single school; and

"(4) with respect to dormitory programs, may be established to cover a nonexclusive area, as required by reason of such factors as social or educational need or isolation, or both.

"(d) In establishing school attendance areas under this section, the Secretary shall, in the following order—

"(1) determine attendance areas for Bureau operated programs with respect to the entire geographic area where potential students reside, considering the factors in subsection (a) and the specific educational

needs of the students to be served, taking into account the wishes of the tribal governing body and local school boards concerned;

"(2) coordinate such attendance areas with those determined by schools funded under contract with the Bureau;

"(3) preserve current or historical service patterns, to the greatest extent possible; and

"(4) coordinate such school attendance areas with the school attendance areas of public schools in the vicinity, but such public school attendance areas shall not be regarded as exclusive where historical service patterns and current social, educational, or geographic (including transportation) factors show that Indian students will benefit by Bureau programs, taking into account the wishes of the tribal governing body and local school boards concerned.

"(e) In no case shall the Secretary regard a public school attendance area as being exclusive if the Secretary determines, on the basis of past practices or reasonable evidence concerning future practices, that a local school district is unable or unwilling to provide full and equal service (as provided to all of its students for all activities) throughout the year or to provide programs that meet students' particular needs.

"(f) With respect to multitribal boarding schools located off reservation, the Secretary shall establish nonexclusive major attendance areas, and shall provide procedures for recognizing and respecting parental choice concerning the special educational or social needs for students residing outside such areas, to the extent consistent with the best interest of the student.".

BUREAU OF INDIAN AFFAIRS EDUCATION FUNCTIONS

SEC. 4. (a) Section 1126(a) is amended by adding at the end thereof the following: "The Director of the Office (whether permanent or acting) shall report directly and solely to the Assistant Secretary for Indian Affairs".

(b) Section 1126(b) by striking the last two sentences and inserting in lieu thereof the following: "All contract functions relating to education (including those pursuant to the Indian Self-Determination and Education Assistance Act) shall be supervised and directed by the Director of the Office.".

(c) Section 1126(c)(2) is amended to read as follows:

"(2) provide all services and support functions for education programs in the areas of procurement, budgeting, and personnel.".

(d) Section 1126 is further amended by redesignating subsection "(d)" as subsection "(e)" and by inserting after subsection (c) the following new subsection:

"(d) There shall be within the Office a facilities division which shall be responsible for maintenance, construction (including planning and design), repair, renovation, and alteration of all facilities and physical plant related to education programs operated or funded by the Bureau. Such division shall be comprised of all individuals involved directly and substantially in the performance of such functions. The facilities division shall be supervised and directed by the Director of the Office. The personnel employed in connection with (as determined by the personnel records of the fiscal year preceding the date of enactment of the Indian Education Amendments of 1984) and the assets, liabilities, contracts, property, records, and unexpended balance of appropriations, authorizations, allocations, and other funds employed, held, used, arising from, or available in connection with the function transferred by the preceding sentence (as determined on such date of enactment) shall be transferred to the Office for appropriate allocation.

ALLOTMENT FORMULA

SEC. 5. (a) Section 1128(a)(2) is amended—

(1) by striking out subparagraph (D);

(2) by redesignating subparagraph (E) as subparagraph (D); and

(3) by adding at the end thereof the following new subparagraphs:

"(E) special transportation and other costs of isolated and small schools;

"(F) the costs of boarding arrangements, where determined necessary by a tribal governing body or designated local school board; and

"(G) costs associated with greater lengths of service by educational personnel;".

(b) Section 1128(c) is amended by inserting "(1)" after "(c)" and by adding at the end thereof the following:

"(2) All Bureau and contract schools receiving funds under this section—

"(A) shall be treated similarly with respect to the distribution of funds appropriated for operations and maintenance expenses; and

"(B) shall receive an equal amount as an allowance for local school board training and activities including, any other provision of law notwithstanding, meeting expenses and the cost of membership in or support of organizations engaged in advocacy activities on behalf of Indian education.

"(3) The Secretary shall provide to all contract schools an amount for administrative and indirect costs which is at least equal to the amount which would be expended by the Secretary if such school were directly operated by the Secretary. The Secretary shall take such actions as are necessary

to provide contract schools with the full amount as determined by this paragraph without reducing funds available under subsection (a) of this section.".

UNIFORM DIRECT FUNDING

SEC. 6. Section 1129(a) is amended—

(1) by striking out "section 1128," and all that follows in the second sentence and inserting in lieu thereof "section 1128.";

(2) by inserting "(1)" after "(a)" and adding at the end thereof the following:

"(2)(A) For the purpose of affording adequate notice of funding available pursuant to the allotments made by this section, amounts appropriated in an appropriation Act for any fiscal year shall become available for obligation by the affected schools on October 1 of the fiscal year for which they are appropriated without further action by the Secretary, and shall remain available through six months of the succeeding fiscal year. In order to effect a transition to the forward funding method of distribution described in the preceding sentence, there are authorized to be appropriated, in an appropriation Act or Acts for the same fiscal year, two separate appropriations for such allotments, the first of which shall not be subject to the preceding sentence.

"(B) The Secretary shall, on the basis of the amount appropriated in accordance with this paragraph—

"(i) publish, on July 1 preceding the fiscal year for which the funds are appropriated, allotments to each affected school made under this section of 85 per centum of such appropriation; and

"(ii) publish, no later than September 30 of such preceding fiscal year, the allotments to be made under this section of the remaining 15 per centum of such appropriation, adjusted to reflect actual student attendance.

"(3) Notwithstanding any law or regulation governing procurement by Federal agencies, the supervisor of each school receiving funds under this section shall, subject to school board approval, have the authority to expend no more than 10 per centum of the funds allotted by this section to procure supplies and equipment, with or without competitive bidding.".

APPEALS FROM ACTIONS OF SCHOOL BOARDS

SEC. 7. (a) Section 1129(b) is amended by striking out the last sentence and inserting in lieu thereof the following: "The supervisor of the school may appeal any such action of the local school board to the superintendent for education of the Bureau agency by filing a written statement describing the action and the reasons the supervisor believes such action should be overturned. A copy of such statement shall be submitted to the local school board and such board shall be af-

forded an opportunity to respond, in writing, to such appeal. After reviewing such written appeal and response, the superintendent may, for good cause, overturn the action of the local school board. The superintendent shall transmit the determination of such appeal in the form of a written opinion to such board and to such supervisor identifying the reasons for overturning such action.".

(b) Section 1131(d) is amended by striking out paragraphs (2) and (3) and inserting in lieu thereof the following:

"(2)(A) The supervisor of a school may appeal to the appropriate agency superintendent for education any determination by the local school board for the school that an individual be employed, or not be employed, in an education position in the school (other than that of supervisor) by filing a written statement describing the determination and the reasons the supervisor believes such determination should be overturned. A copy of such statement shall be submitted to the local school board and such board shall be afforded an opportunity to respond, in writing, to such appeal. After reviewing such written appeal and response, the superintendent may, for good cause, overturn the determination of the local school board. The superintendent shall transmit the determination of such appeal in the form of a written opinion to such board and to such supervisor identifying the reasons for overturning such determination.

"(B) The superintendent for education of an agency office of the Bureau may appeal to the Director of the Office any determination by the local school board for the school that an individual be employed, or not be employed, as the supervisor of a school by filing a written statement describing the determination and the reasons the supervisor believes such determination should be overturned. A copy of such statement shall be submitted to the local school board and such board shall be afforded an opportunity to respond, in writing, to such appeal. After reviewing such written appeal and response, the Director may, for good cause, overturn the determination of the local school board. The Director shall transmit the determination of such appeal in the form of a written opinion to such board and to such superintendent identifying the reasons for overturning such determination.

"(3) The superintendent for education of an agency office of the Bureau may appeal to the Director of the Office any determination by the agency school board for the school that an individual be employed, or not be employed, in an education position in such agency office by filing a written statement describing the determination and the reasons the supervisor believes such determination should be overturned. A copy of such statement shall be submitted to the agency school board and such board shall be afforded an opportunity to respond, in writing, to such appeal. After reviewing such

written appeal and response, the Director may, for good cause, overturn the determination of the agency school board. The Director shall transmit the determination of such appeal in the form of a written opinion to such board and to such superintendent identifying the reasons for overturning such determination.".

MANAGEMENT INFORMATION SYSTEM

SEC. 8. Section 1132 is amended—

(1) by striking out "the Bureau," and inserting in lieu thereof "the Office,";

(2) by striking out "this Act" and inserting in lieu thereof "the Indian Education Amendments of 1984"; and

(3) by striking out "to all agency and area offices of the Bureau and".

AUDITS

SEC. 9. Section 1136 is amended by inserting "(a)" after "SEC. 1136." and by adding at the end thereof the following new subsection:

"(b) The Inspector General of the Department of the Interior shall establish a system to ensure that financial and compliance audits are conducted of the Bureau, the Office, and each Bureau school at least once in every three years. Audits of Bureau schools shall be based upon the extent to

which such school has complied with its local financial plan under section 1129.".

REGULATIONS

SEC. 10. Section 1138 is amended by adding at the end thereof the following: "Such regulations shall contain, immediately following each substantive provision of such regulations, citations to the particular section or sections of statutory law or other legal authority upon which such provision is based.".

VOLUNTARY SERVICES

SEC. 11. Title XI of the Education Amendments of 1978 is further amended by adding after section 1139 the following new section:

"VOLUNTARY SERVICES

"SEC. 1140. Notwithstanding section 1342 of title 31, United States Code, an officer or employee of the Bureau or the Office may, subject to the approval of the local school board concerned, accept voluntary services on behalf of Bureau and contract schools.".

Mr. KILDEE. Before I ask our first witness, Mr. John Fritz, the Deputy Assistant Secretary of Interior for Indian Affairs, to come to the table, I want to acknowledge several statements in support of H.R. 5190 which have been submitted for the record.

Congressman Richardson, a strong supporter of Indian education initiatives, has transmitted the statements of support from the Navajo Area School Board Association and the National Indian School Board Association. Those statements will be made part of the record of this hearing.

[Prepared statement referred to follows:]

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, DC, April 6, 1984.

Hon. CARL D. PERKINS,
Chairman, House Education and Labor, Subcommittee on Elementary, Secondary, and Vocational Education, Washington, DC.

DEAR MR. CHAIRMAN: The Navajo Area School Board Association and the National Indian School Board Association represent a number of Navajo Schools that are located in my District. Although they could not be present to express their views, I would greatly appreciate your including their testimony in the April 10, 1984 hearing record on H.R. 5190, the Indian Education Amendments of 1984.

Thank you very much for your assistance on this matter.

Sincerely,

BILL RICHARDSON,
Member of Congress.

TESTIMONY ON HOUSE OF REPRESENTATIVES RESOLUTION NUMBER 5190

The Alamo Navajo School Board Incorporated, wishes to thank the United States House of Representatives Committee on Education and Labor for the opportunity to present its testimony and comments on House Resolution Number 5190 and for the consideration it knows will be given to them by the Committee.

The school board agrees with the framers of the legislation that amendment to P.L. 95-561 is in order and is gratified that several of the significant issues that affect the education of Indian children are addressed in the proposed amendment. The board, in the past several years, has exerted considerable effort and has spent much time in the effort to reach an equitable and workable solution to the "indirect cost" problem faced by contract schools and to obtain the funds for school operation through the "forward funding" process.

In the pursuit of these objectives and in the course of operating several programs under the authority of P.L. 93-638, including its K-12 school, its health clinic, vocational training, adult education, JTPA, and smaller supplementary programs, the school board has gained valuable experience and skill and has intensified its belief in and commitment to the concept of Indian self-determination. From its inception, local control has been the very essence of the Alamo Navajo Community School. Recently, the school board has to struggle arduously with Bureau of Indian Affairs officials in order to be allowed to contract for the construction of its new school authorized by Congress last year. The contest stopped just short of litigation when Assistant Secretary Ken Smith personally met with us and reverse his earlier decision prohibiting us from contracting the function. The point of this explanation is that the Alamo Navajo School Board, Inc., is a staunch, strong advocate of self-determination and is an excellent example of P.L. 93-638 in action.

However, in reviewing the proposed amendment to P.L. 95-561, as written in H.R. 5190, we are deeply concerned because it appears that local control and self-determination face further diminution and restriction. The imposition of a standard fiscal managment and reporting system on contract schools is such a restriction.

It cannot be denied that examples of poor management and of mismanagement can be readily found. That these instances result in waste and inefficient use of tax dollars also cannot be denied.

However, it does not seem fair or necessary to penalize all contract schools for the errors and improper activities of only a part of the group. It would seem to be sufficient for any contract school to use any fiscal management system that is pronounced acceptable by a Certified Public Accountant firm and that demonstrates its

capability, compliance, and performance through the results of an annual audit by such a firm. This approach should be satisfactory to officials of federal agencies (who are consistently complaining that they are insufficiently staffed and are too short in travel funds to monitor and audit all programs regulary) and to members of Congress who are responsible for looking after the public interests and for proper use of appropriated funds.

In our case, we have spent two years and several thousand dollars in developing a financial management system that meets the needs of our unique, complex operation. Alamo Navajo School Board, Incorporated, is at the hub of community development, embryonic economic enterprise, health services provision, and local government improvement—much more than simply operating a school and educational programs. To be required to restructure our financial management and record keeping system would be exceedingly deleterious to our entire spread of programs and to the welfare of the community. It would be costly and destructive. It is hardly conceivable that a system developed for use nationally by experts who are unfamiliar with specific needs of local contractors would be particularly useful for schools such as Alamo, Ramah, or Rock Point where endeavors are so diversified.

Most importantly, it takes control away from the local level and returns it to the federal agency level. This is in direct contradiction to the letter and spirit of both P.L. 95-561 and P.L. 95-638. Additionally, we view such an imposition as regressive and paternalistic.

May we recommend that Section 2, subsection (c)(3) have a paragraph added and designed as "(C)", to wit:

(C) Contract schools may elect to establish fiscal control and accounting procedures of their own design and for their specific needs, provided that:

i. Such election shall be made known to the Secretary at least six months prior to the beginning of a given contract term;

ii. Such procedures shall be verified and their use attested to by a Certified Public Accountant; and

iii. Annual audits of funds and procedures shall be made by a Certified Public Accountant and the results submitted to the Secretary in accordance with contractual terms.

We realize that such specificity of language is more in keeping with regulations that will be promulgated to accompany the legislation. However, experience tells us that the regulations do not always reflect the intent of the law, nor provide an adequate basis from which to seek relief or redress when officials appear to have erred in implementing a law. A good example of this is the now-familiar "Secretarial funding level" issue; it is stated in the statute, but has yet to be implemented. Further discussion of this issue is presented below.

A second major point of concern raised by H.R. 5190 is the way in which administrative overhead costs for schools (usually referred to as "indirect costs") are to be determined or generated. Alamo Navajo School Board, Incorporated, has long proposal and supported the concept of a formula to be included with the ISEF funds distribution. In fact, we have argued that the existing language of 25 USC mandates such a formula.

Our reservations stem from the proposed language in H.R. 5190, where it states in Section 5(c)(3) that "The Secretary shall provide all contract schools an amount for administrative and indirect costs which is at least equal to the amount which would be expended by the Secretary if such school were operated by the Secretary." This provision is already the law; it replicates of P.L. 93-638. But as we all know—and this includes past and present Secretaries and their designees—the law has never been able to determine succinctly its total administrative costs for operating schools. Two major studies by the American Indian Law Center and countless meetings of persons from all levels of authority and involvement have, as yet, failed to produce a workable solution to the problem. We believe that the proposed resolution should stipulate a process for arriving at a solution—possibly a committee of experts on education and finance from both the schools and federal agencies—and a time frame for completion of the work.

If such a stipulation is not included in the bill, then a further caveat needs to be brought to your attention. The indirect costs, referred to in the quotation above, are very different for a school operated on contract by a local school board than those that may be incurred by schools operated by, or as if by, the Secretary. We fear that critical losses of funding could befall contract schools if the difference is not spelled out and taken into account specifically in the language of the resolution.

A third, and perhaps less critical, concern with the proposed legislation is related to the restructuring of the OIEP and to the functions to be subsumed under its new authorities. We agree that the office should have the authority and responsibility

for all educationally related functions and services. It should be especially beneficial to have the contracting function under OIEP's authority.

It would seem prudent, however, to specify in the language of the bill that appropriations for OIEP's use for these new functions that would devolve upon it should be tied to the forward-funding process set forth in section 6. If funds for repair and maintenance (O & M) are not alloted in this fashion, it will not be possible to plan adequately nor effectively. This has been a long-standing problem for schools.

A question arises in connection with the creation of a ". . . facilities division which shall be responsible for maintenance, [and] construction. . . ." If H.R. 5190 eventually becomes law, how will projects under construction at that time be handled? It may be inferred from the proposed bill that, when the personnel and resources, including contracts, are transferred to and supervised by OIEP, any projects in progress will continue automatically. However, the final sentence in the new subsection (d) appears to give the Director, OIEP, broad discretion to reallocate all resources in whatever way he/she thinks is appropriate. We are concerned here because, if and when this transfer takes effect, Alamo will be in the middle of construction on its 8.35 million dollar school, and any major interuption or problem that may occur could have very serious consequences which it should not have to face or endure. We believe that the language of this section should address this point, either to "grandfather" in projects in progress or to specify transition procedures to accommodate them.

Further, we hope that, as the language in the section now stands, the Bureau of Indian Affairs does not seize upon this opportunity to duplicate efforts and positions. As past experience indicates, a bureaucracy tends to expand at any opportunity and to require increasingly large sums of money for administration and support services. Will not this new structure now require two sets of buildings, two sets of administrators, two sets of equipment, etc.—one for Education and one for Operations—at each Bureau of Indian Affairs Agency Office? It appears that a number of significant logistical and organizational problems will eventuate unless some specificity is introduced to preclude them.

The framers of the proposed legislation are to be commended for their action to provide proper immunization for Indian school children. Although the students in our school are adequately cared for in this respect, we are aware of the critical nature of the situation in orther parts of the nation. We know, too, that continual pressure must be exerted on federal agencies to provide needed services and that it is often necessary to have the force of law to rely upon when requesting action to meet needs.

We further commend the general intent and substance of the resolution. The major amendments are sorely needed. We believe, however, that we have presented some valid points for consideration, and, given the lack of opportunity to present ideas and concerns prior to the introduction of the legislation in the House of Representatives, we respectfully request that due deliberation be given these points, especially with regard to the extent of the reduction of self-determinative authority for Indian people at the local level. We must move forward, not backward, with self-determination.

Thank you for your attention and for your consideration of our concerns.

DR. WILLIAM BERLIN,
Executive Director Alamo Navajo School Board, Inc.

DIBÉ YÁZHI HABITIIN ÓLTA' INC.,
BORREGO PASS SCHOOL,
Crownpoint, NM, April 5, 1984.

Hon. DALE E. KILDEE, *Congressman,*
314 Cannon House Office Building,
Washington, DC

DEAR CONGRESSMAN: I am enclosing written testimony for hearings on H.R. 5091, reflecting its impact upon the Borrego Pass School program, if passed as introduced. On the whole the Bill is a very commendable effort to remedy many of the problems which have surfaced since passage of P.L. 95-561, Title XI, and we are genuinely grateful to you for taking this initiative.

In a few specific instances, the impact of the Bill is either unclear, or appears to work against the interests of our School and local Indian control of our program. The testimony focuses particularly upon these, in order to be sure that they are not lost among other concerns. We do not intend to be "negative" about a very good Bill in doing so.

Again, thank you for your conscientious efforts to make Indian Education work for Indian students, Keep it up.

Sincerely,

DONALD D. CREAMER,
Executive Director.

Enclosure.

WRITTEN TESTIMONY

ON

H.R. 5091

Amending Title XI of the Education Amendments of 1978 relating to Indian Education

Submitted on behalf of the Borrego Pass Contract School Board

by

Donald D. Creamer
Executive Director
Borrego Pass School
Crownpoint, New Mexico 87313

Arnold D. Creamer

April 5, 1984

THE IMPACT OF AMENDMENTS PROPOSED IN HR 5091 FOR P.L. 95-561 UPON BORREGO PASS CONTRACT SCHOOL PROGRAMS

REFERENCES MADE ARE TO P.L. 95-561 SECTION	HR 5091 Pg.	Line	
1121(d)	2	19	This change eliminates Tribal & School Board rights to simply "veto" inappropriate BIA standards, and instead places us in the position of simply proposing alternative standards to the Secretary, who can arbitrarily reject them without any further remedy. In connection with the imposition of such standards upon Contract schools under a timeline (below), or the requirement that we adopt some other external standards, this literally eliminates our control of the educational program of the school, at BIA option. Regardless of any criticisms of Contract schools found in the recent report of the Interior Appropriations Sub-Committee Investigative staff, this goes too far the other way.
RECOMMENDATION			It is recommended that the last clause be replaced with an appropriate appeal process which would eliminate any power by BIA to wipe out Indian developed programs which are working and might be an embarassment to BIA if its own programs are failing.
1121 (e)	3	5	Irrespective of any other objections to the amendments proposed to this section, the timeline projected does not provide for how this applies to existing contract schools.
	3	8-13	The amendment requires us to be in compliance with either BIA's standards, or some recognized accreditation agency's standards within a discrete time-frame. We can achieve this at the present time. However, we believe it is a "tunnel visioned" approach to genuine quality control of Indian Education which will prevent the solution to major educational problems of Indian students in the future. As evidence of this we submit that there is no way on earth that we would have been able to develop the present Borrego Pass School bilingual/bucultural/biliterate instructional program had we been bound by such a requirement in the past while it was being developed. The critical factor in this is that all such standards and accreditation systems that we know of have written into them the vested interests of the current educational system's professional work force, in requirements for "State Certification" of teachers, etc.; and all such certification systems are based upon completion of pre-conceived courses of study at existing institutions of higher education. Our experience of such certification is that it guarantees nothing in the way of teaching skill in dealing with the unique educational problems of bilingual Indian students. The native language skills and cultural knowledge of local

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REFERENCES MADE ARE TO
P.L. 95-561 HR 5091

SECTION	Pg.	Line	
1121 (e)	3	8-13	Navajo non-professionals far outweighed the professional training of any certified personnel we could hire throughout our development period, and in many cases the preconceptions of how to teach which professionals had developed in their College training and experience elsewhere were genuine liabilities in our setting, and created needless resistance to program development and change. Recent national studies of the standard educational systems in the land have revealed that they are critically flawed, even for the mainstream students for whom they were developed. Consequently, we believe that the imposition of such standard approaches upon the only alternatives to BIA's failing system, the Contract Schools, is ill-timed, and may be self-defeating. As a consequence, we recommend the following changes:
RECOMMENDATION	3	5	Extend the time for new schools by several years, to allow for a period of program development, and training of local personnel to meet State certification requirements. As one measure, we are now graduating 2 to 3 adults a year with Education degrees, after 10 years effort at on-the-job training and going to school part time and in the summers.
RECOMMENDATION	3	9	Provide for an exception to State Certification standards for personnel who use the students' native language as a teaching medium. Require progress toward an Education Degree instead.
RECOMMENDATION			Also, provide for compliance with approved Tribal standards developed under 1121 (d) above, as an alternative.
1121 (e)	3	17	The Amendment establishes a standard of "comparability" between uniform fiscal & accounting requirements for Contract Schools and BIA Schools. BIA systems for such matters are overly complex, cumbersome, and have been severly criticized by the OIG and GAO. They are no model for anything! However, we already have intimations that BIA bureaucrats want to use (or even "strengthen") this language to require the Contract Schools to use BIA's systems in total.
RECOMMENDATION			Delete the words in this sentence from "comparable" on.
1121 (f)	3	22	This new section is added to protect BIA personnel from penalty if lack of resources prevents implementation of standards. It provides no such guarantees for Contract School Boards, who could be held to the standards and lose their contract as a result of changes made in Section 1121 (e) to eliminate the guarantee against this there.
RECOMMENDATION			Re-introduce an appropriate form of the second sentence of Section 1121 (e) after "personnel action" here.

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REFERENCES MADE ARE TO P.L. 95-561 HR 5091

SECTION	Pg.	Line	
1121 (g)	4	9	This section introduces badly needed requirements for BIA consultation with Indian people affected before it closes or curtails schools. It does not cover attempts by BIA to transfer jurisdiction for schools from Federal to State jurisdiction, as was done over the dead bodies of a number of contract schools in Alaska recently. This possibility is very real to us, in view of the current Assistant Secretary's (and Administration's) repeated declarations that Indian students should be in Public Schools. We are attaching charts showing Spring 1983 standardized test score comparisons between our students and Indian students in the local Gallup-McKinley Public Schools. These clearly indicate the academic disaster that such a transfer would create.
RECOMMENDATION			Add "or responsibility for its operation transferred to the State Public School system" after the word "closed" in this line, and in line 16 below.
1121 (g)	4	15-24	This section requires notice to Indian tribes, local school boards, parents, etc. when the Bureau is considering closing or curtailing a school. It does not required the Bureau to involve these groups in the decision, nor even to give their opinions any consideration. It could be complied with simply by publishing a notice in the Federal Register, which could never reach the local community at all. It assumes, on page 5 line 11 that the principal remedy for such groups is going to be an appeal to the Congress, which should be a last resort.
RECOMMENDATION			Add language requiring "active consultation and involvement" of these groups in the "decision making process", and requiring the Bureau to answer objections to its plans in writing citing good cause, etc. (as Sections 1129, 1131, et al. regarding appeals from actions of School Boards) where it goes ahead with such actions anyway.
1124	6	12-17	As written, this section requires Bureau-operated schools on a multi-school reservation to set boundaries covering the entire reservation, totally overlapping the attendance boundaries of Contract Schools. In turn, it implies that Contract Schools set their own boundaries independently of those of Bureau-operated schools. This simply perpetuates the current inexcuseable "head hunting" for students to get their formula funding which happens now in some cases, but makes it a contest between Bureau and Contract schools. We need boundaries to stop it, not encourage it!
	7	11-12	
RECOMMENDATION			Require a boundary system between day-school programs both funded and operated by the Bureau, with no overlap at all. Allow parents, at their own expense, to enroll and transport day students either-way, across these boundaries.

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REFERENCES MADE ARE TO P.L. 95-561 SECTION	HR 5091 Pg. Line	
1124	7-17 to 8-7	Since the attendance boundaries are to be set by the Secretary, and the current Administration has already announced repeatedly its philosophy that Indian students should be in public schools, and in most States the Public School boundaries completely overlap all BIA and Contract School service areas by State Laws which require these Schools to serve any student in the State who wishes to attend, no opportunity should be given to the Secretary to wipe out a Bureau school or school system by declaring that any on-reservation Public School attendance area is exclusive. As written, these sections simply invite BIA to hide an educational termination policy behind a smoke-screen of arguments about "historical service patterns, current social, educational, or transportation factors" etc., and claims that the public schools are willing and able to meet Indian students needs.
RECOMMENDATION		Replace this entire section with a simple statement that "No on-reservation Public School attendance area shall be regarded as exclusive. Where Indian students will benefit by Bureau operated or funded programs that meet their particular needs, in accordance with the wishes of the tribal governing body and the local school boards concerned, Indian students residing on the reservation shall be allowed to attend those Bureau operated or funded schools closest to their homes.
1126 (a)	8 18-19	We applaud this section. However, we suggest that all earlier sections be reviewed and language changed to fully implement it. A typical example is on page 3, line 14, where the "Bureau", not the "Office" is to contract for development of fiscal and accounting procedures for the Contract Schools. If, indeed, BIA personnel should choose the contractor (we'd rather see GAO do it), it should be "Ed", not "BOB" that chooses. (i.e. The Office, not the Bureau.)
1126 (b)	3 24	Contracting functions should not be exercised, for P.L. 93-638 purposes, at the Agency level, where there is the greatest potential conflict of interest for BIA personnel afraid of losing their jobs and empires. This issue should be addressed in the Act itself. It would make a natural function for Area EPAs in most cases, unless the Area EPA supervises a school directly, such as with off-reservation boarding schools.
1126 (c)	9 4	Curriculum has apparently been inadvertently left out here in the support functions to be provided by the Office. It is so badly needed, that it should be specially highlighted instead.
1126 (d)	9 12	Language here suggests that Contract Schools may no longer be able to contract Facility Management services, once they are transferred to the Office. This should be corrected. It makes no better sense for the Office to control the

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REFERENCES MADE ARE TO P.L. 95-561 SECTION	HR 5091 Pg.	Line	
1126 (d)	9	12	janitor and maintenance man at a contract school, if that school wants direct control, than it does for Facility Mgmt. to control these personnel at a BIA school when the Principal wants to control them.
RECOMMENDATION			Add, after "Bureau" in line 13, the words "subject to the provisions for contracting such services in P.L. 93-638."
1128 (c)	10/24 & 11/5-13		The provision for an "equal amount" for local school board "activites" including "meeting expenses" does not reflect the real differences in both scope of responsibility and work load between the School Boards of Bureau-operated and Contract Schools. As reflected in Sections 1129 and 1131, Bureau School Boards do not have final responsibility for their school in anything like the same degree as a Contract School Board does. They use Bureau developed and operated administrative systems, can be overruled by Bureau employees, and act within a narrowly limited range of questions. They are not eligible for the range of discretionary grant funding for program development that Contract School Boards are, and in few (if any) cases, have gone into serious program development. As a consequence, Contract School Boards must meet far more often, for far longer times, and on far more complex issues than Bureau Boards do. They need more training for the job, on a more continuous basis. They need more travel costs to represent the school at negotiations, meetings, etc., where these functions are done <u>for</u> Bureau Boards by bureaucrats. At present these functions are financed, based upon past cost history, through Indirect Cost budgets. If specifically allowed for in the Direct Cost Program budget, this will no longer be possible under Indirect Cost regulations. As a consequence, the costs will have to be foregone (at a loss of Indian control in the Contract Schools), or financed out of funds otherwise provided for services to children.
RECOMMENDATION			Delete "and activities" in line 25, and "meeting expenses" in line 2.
1129 (a)	12	12	July 1 is not really early enough in the program year to enable BIA operated and funded schools to compete in the labor market for new teachers for the next fall. Most school districts are hiring in April for the following school year.
RECOMMENDATION			Set the date here as early as April 1, if possible.
1129 (a)	12	16	If 85% of funding is assured by Oct. 1, the remaining 15% does not need to be known that early. Time should be allowed for multiple Fall student counts, as at present.
RECOMMENDATION			Set the date at November 30th.

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REFERENCES MADE ARE TO			
P.L. 95-561	HR 5091		
SECTION	Pg.	Line	
1132 (1)	-	-	"Student enrollment" needs to be expanded to include a full school census of all students living within the attendance areas established in Section 1124, including drop outs to age 18 by the close of the current school year.

GENERAL COMMENT

The above comments highlight perceived problem areas, so the net effect may be negative. This is not intended. The overall impact of HR 5190 upon the Borrego Pass School program will be positive and is welcomed. It is a genuine conscientious effort to rectify problems which have surfaced in Indian Education in the BIA sector since passage of P.L. 95-561, and is to be applauded as such.

April 5, 1984

Donald D. Creamer, Executive Director
Borrego Pass Contract School.

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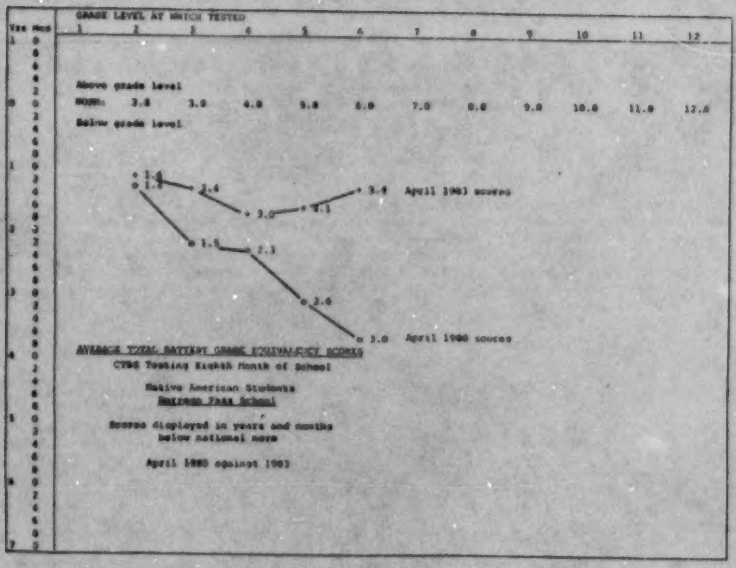
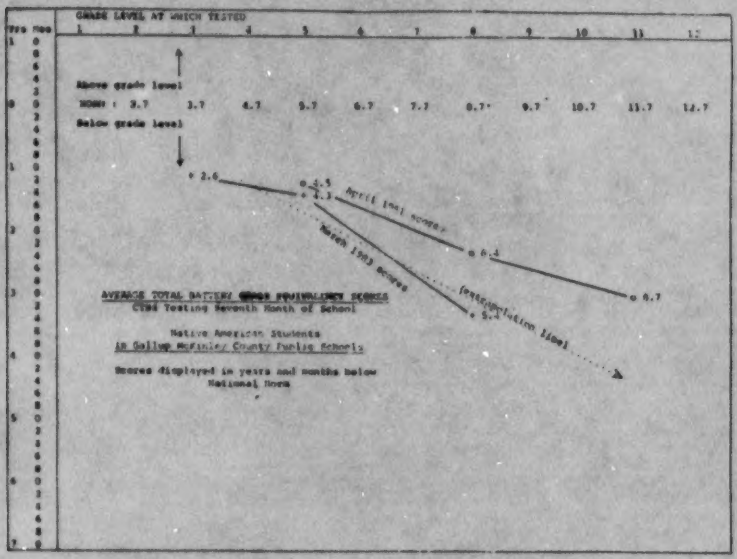

GRADE LEVEL AT WHICH TESTED
Yrs Mos
1 2 3 4 5 6 7 8 9 10 11 12
Above grade level
NORM: 3.0 4.0 5.0 6.0 7.0 8.0 9.0 10.0 11.0 12.0
Below grade level
April 1983 scores
April 1982 scores
AVERAGE TOTAL BATTERY GRADE EQUIVALENCY SCORES
CTBS Testing Eighth Month of School
Native American Students
Ramah High School
Scores displayed in years and months
below national norm
April 1982 against 1983


GRADE LEVEL AT WHICH TESTED
Yrs Mos
1 2 3 4 5 6 7 8 9 10 11 12
Above grade level
NORM: 3.7 4.7 5.7 6.7 7.7 8.7 9.7 10.7 11.7 12.7
Below grade level
April 1981 scores
March 1983 Scores
Instructional Ideal
AVERAGE TOTAL BATTERY GRADE EQUIVALENCY SCORES
CTBS Testing Seventh Month of School
Native American Students
in Gallup McKinley County Public Schools
Scores displayed in years and months below
National Norm

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D..E YAZHI HABITIIN OLTA, IN..
BORREGO PASS SCHOOL
P.O. Drawer A
Crownpoint, New Mexico 87313
Phone 505-786-5237

April 5, 1984

MEMORANDUM

TO : All School Board Members

FROM : Donald D. Creamer, Executive Director

SUBJECT: Special School Board Meeting cancelled.

This is to inform you that because of time pressure from deadline for responding to P.L. 95-561 amendments, the special School Board meeting scheduled for Monday, April 9, 1984 has been rescheduled. The next special meeting will be on Thursday, April 12, 1984 at 1:00 p.m.

Mr. Ray Smith with Navajo Division of Education in Window Rock will be meeting with the Board.

After the meeting, the Board will go on into Grants to have an appreciation dinner at THE INN for Mr. Glen Loley, Sr., and Donna Chacho.

Please make plans to attend this meeting.

Donald D Creamer

Donald D. Creamer, Executive Director
BORREGO PASS SCHOOL

cc: School Board File

GOVERNOR'S STATEMENT ON INDIAN EDUCATION

The Pueblo of Acoma is known as the oldest continuously inhabited community in North America. We are proud of our traditional existence, and at the same time, we take pride in our community's efforts in addressing present day and future educational needs of our Acoma people. As Governor of the Pueblo of Acoma, I have submitted numerous papers over the past two (2) years concerning the vital need for quality education from early childhood through life. This paper shall specifically address the H.R. 5190 bill which proposes to make positive amendments to P.L. 95-561 and I shall speak to what I consider to be the absolute need to continue BIA-funded prekindergarten programs.

H.R. 5190

The Pueblo of Acoma strongly supports the changes in P.L. 95-561 as recommended in H.R. 5190. In point of fact, it is our opinion that many of the sections of H.R. 5190 are already mandated by existing law and should have been implemented five (5) years ago. The fact that the Bureau of Indian Affairs-Office of Indian Education Programs (BIA-OIEP) has not been inclined to support, muchless implement, P.L. 95-561 is indicative of the "untrust" relationship which currently exists between tribes and the Bureau.

We view the amendments proposed in H.R. 5190 as vital steps towards the guarantee of quality education for the Indian student. Mandatory compliance with standards, required immunizations, accreditation, school attendance boundaries, appropriate maintenance of facilities, appropriate administrative funding and school board competency—these are minimal assurances which any non-Indian student enjoys within a public school system.

The Pueblo of Acoma currently has a BIA-operated elementary school, the Sky City Community School. Approximately half of our Acoma families each year choose to send their young children 30 miles away to a public school. This statistic alone indicates the perceived quality of BIA education within our community. As Governor, I have tried to encourage our families to support the Sky City Community School, and yet at the same time, I realize that the quality of education within that facility can neither be guaranteed nor even addressed under the current OIEP system. I, too, send my young children to the public school system, and this fact saddens me.

Last year, funds which were vitally needed for the basic maintenance and upkeep of the Sky City Community School were diverted by the OIEP Director to the relocation of the Albuquerque Area Education Office. This office was relocated adjacent to the Agency Office where they can duplicate their efforts closer at hand. How can we speak of quality education when we see needed funds diverted for such ridiculous purposes?

The Pueblo of Acoma has considered contracting the Sky City Community School for more than 10 years. We have seen this effort as a means of putting the concepts of "quality" and "community" back into education for our Acoma people. There is genuine enthusiasm on the part of our community people regarding contracting Sky City Community School. Yet we realize that until steps are taken to ensure appropriate administrative and facility support funds, appropriate and timely distribution of those funds, and appropriate support services through OIEP that the goal of providing quality, community-directed education may well be unobtainable.

Contrary to the Office of Indian Education Programs, we do not view H.R. 5190 as a "seriously flawed document." On the contrary, we see this bill as a positive step towards the guarantee of quality education, a guarantee which was ratified in our treaty with the United States. Contrary to the position of the Bureau of Indian Affairs, we believe that tribal consultation has been achieved in this matter. As Governor of the Pueblo of Acoma, I strongly object to this delaying tactic which is invoked only when it suits the bureaucratic purposes of this Administration. Where was the tribal consultation when OIEP made the decision to terminate its prekindergarten programs?

BIA PREKINDERGARTEN PROGRAMS

The Pueblo of Acoma and the Mississippi Band of Choctaw Indians received demonstration funding to implement the Parent-Child Development Program (PCDP) in 1973. Since that time, these two (2) tribes have worked cooperatively to achieve permanent funding for prekindergarten programs as an educational activity. The success of Project Head Start and its substantial impact upon the developmental and educational readiness of the disadvantaged young child is thoroughly researched

and documented. However, due to the income and funding limitations, Head Start cannot and does not provide needed preschool opportunities for all Indian children.

The Bureau of Indian Affairs—Office of Indian Education Programs, through its own policies and regulations, is obligated to (1) develop standards for prekindergarten programs, and (2) provide funding for these programs. However, OIEP has instead opted to terminate the existing sixteen (16) prekindergarten programs serving approximately 1,000 young children without any tribal consultation.

Acoma and Choctaw, at their own expense, recently provided staff to develop a draft of prekindergarten standards and an allocation process. The draft prekindergarten standards were completed and submitted to the OIEP Director on March 23, 1984. The proposed standards incorporated salient elements from existing federal (Head Start) and state standards and provided a means for extending prekindergarten opportunities to other tribes within the existing FY 1984 allocation of $1.6 million.

The Bureau neglected to request appropriations for FY 1984 and funds were made available only through a supplemental appropriations. OIEP has again refused to request prekindergarten appropriations for FY 1985 and there is some doubt that the proposed standards will be published for tribal consultation and comments.

The Office of Indian Education Programs has suggested that Head Start and Johnson O'Malley funding would serve as alternatives to prekindergarten allocations. As mentioned earlier, Head Start is not an alternative due to the income criteria for eligibility and JOM's supplemental support would constitute a 96% reduction of funding for existing preschool activities. These alternatives are nothing more than cruel jokes.

The Pueblo of Acoma does not view the educational development of the young child as a laughing matter. On the contrary, it is our belief, substantiated by research, that the preschool environment is the appropriate setting for addressing the learning and language deficiencies which plague many Indian students throughout their educational careers. We view the preschool setting as the only appropriate environment for implementing a strategy of prevention rather than one of later remedy. With well-conceived preschool prevention strategies, the need for remedial activities which are often ineffective would be reduced. The preschool environment is also the best opportunity for generating long lasting parental involvement in the child's education, a topic rarely addressed by the Office of Indian Education Programs.

As Governor of the Pueblo of Acoma, I strongly encourage the House Committee on Education and Labor to communicate its support for (1) the publication and finalization of prekindergarten standards, and (2) the inclusion in ISEF of a permanent funding base for BIA prekindergarten programs. Your direct knowledge of the substantial impact and benefits of Project Head Start provides you with a rare insight into the long term gains (and cost savings) which can be realized through quality early childhood education.

In conclusion, I would like to extend my sincere appreciation to Chairman Perkins, Congressman Kildee, Committee members and staff for your continuing support of Indian education. We believe that the American Indian goals of self-determination and self-sufficiency are obtainable so long as there are adequate opportunities for quality education.

MERLE L. GARCIA,
Governor, Pueblo of Acoma.

[MAILGRAM]

PARENT CHILD DEVELOP PROGRAM V SEYMOUR,
Pueblo of Acoma NM, March 12, 1984.

Miss KATHY JOHNSON,
House Subcommittee for Interior Appropriations, Rayburn Office Building, Washington DC:

The Pueblo of Acoma strongly opposes the alternative suggested by the BIA for existing BIA prekindergarten program. Headstart enrollment is limited to families below the proverty level and does not serve all children within the Acoma community. JOM funds are allocated in the amount of $135.00 per child and result in a 96 percent funding reduction and is not a viable alternative to present funding.

As Governor of the Pueblo of Acoma, I urgently request that the committee support the continuation of funding for BIA prekindergarten program until appropriate standards are developed by the Office of Indian Education Programs.

The Pueblo of Acoma did not receive any assistance from OIEP or any offer thereof from OIEP for our Headstart expansion proposal as directed by the conference report. It is our feeling that OIEP has consistently ignored the intent and directions of Congress in this vital matter.

Your support is sincerely appreciated.

MERLE L. GARCIA, *Governor,*
Pueblo of Acoma.

PREPARED STATEMENT OF RAYMOND MORGAN, CHAIRMAN, EXECUTIVE BOARD, NAVAJO AREA SCHOOL BOARD ASSOCIATION, MEMBER, BOARD OF DIRECTORS, NATIONAL INDIAN SCHOOL BOARD ASSOCIATION

Mr. Chairman and Members of the Committee:

I appear today to express the support of both the Navajo Area School Board Association and the National Indian School Board Association for H.R. 5190. Together these Associations represent the great majority of the school boards affected by this Bill.

The provisions in H.R. 5190 are clearly needed, and I do not need to belabor the point. Mr. Chairman, you have visited our schools and you have seen the problems for yourself.

Ever since the enactment of Title XI of Public Law 95-561 in 1978, the Navajo Area School Board Association has tried to secure full implementation of the law. Finally, as a last resort, we filed suit in Federal Court last month.

The same Bureau of Indian Affairs officials who have failed to implement the BIA provisions of Public Law 95-561 will no doubt appear before you in opposition to H.R. 5190. In evaluating BIA's testimony, the Committee ought to consider the record of hostility to Indian education exhibited by the Department of the Interior. Many dedicated people in the field are making a serious effort to carry out the reforms which Congress intended, and their efforts are being frustrated by the same entrenched officials.

I attach to my testimony the comments prepared by our attorney. There are a number of minor drafting changes which, in our view, would improve the Bill. With respect to implementation, I hope you will consider carefully our proposed provision which would make Interior Department officials personally responsible for implementation of this Act.

In conclusion, I want to emphasize that we believe that the system established in Title XI of Public Law 95-561 is a good one. Our school boards are actively involved in carrying out their congressionally mandated duties. Despite our difficulty in securing full implementation of the law and in receiving adequate support services from the Bureau of Indian Affairs, we continue to believe that it is in the best interests of our children to make this system work. We appreciate the help, support and assistance which this Committee has shown for this effort. Enactment of H.R. 5190 would enhance our efforts immeasurably.

Thank you for permitting me to present this statement.

PREPARED STATEMENT OF DANIEL M. ROSENFELT FOR NAVAJO AREA SCHOOL BOARD ASSOCIATION AND NATIONAL INDIAN SCHOOL BOARD ASSOCIATION

H.R. 5190, introduced by Representative Dale Kildee on March 20, 1984 would amend Public Title XI of Public Law 95-561. The Bill contains six major provisions.

First, the Bill provides that BIA's Office of Indian Education Programs shall provide all services and support functions for education programs in the areas of procurement, budgeting and personnel. It establishes a facilities division within the Office of Indian Education Programs which will be responsible for maintenance, improvement and repair, renovation, alteration and construction of all facilities and physical plant related to education programs operated or funded by the Bureau of Indian Affairs.

Second, the Bill requires that no school operated by BIA on January 1, 1984 may be closed or consolidated except through adherence to specifically mandated, detailed consultation procedures with tribal and local entities.

Third, the Bill establishes mandatory procedures and guidelines for the establishment of school attendance boundaries for BIA schools. Day school boundaries may not overlap.

Fourth, the Bill authorizes and requires certain changes in the funding of schools. It requires that all Bureau and contract schools "be treated similarly with regard to the distribution of operation and maintenance funds." In addition, each Bureau and contract school shall receive "an equal amount" as an allowance for local school board training and activities including meeting expenses and "cost of membership in organizations engaged in advocacy on behalf of Indian education." It requires that contract school administrative and indirect costs be funded with no reduction in program funding. The bill permits changes in the ISEP formula to take account of transportation costs, costs of isolated and small schools, costs of boarding arrangements and costs associated with greater lengths of service by education personnel.

Fifth, the Bill authorizes forward funding of BIA education and a carry over of funds for six months into the succeeding fiscal year. It sets out procedures for allotments by the Secretary prior to the beginning of the fiscal year.

Finally, the Bill authorizes the expenditure by the local school supervisor with the approval of the local school board of ten percent of the school's allotment for supplies or equipment with or without competitive bids.

H.R. 5190 contains remarkably detailed requirements for the operation of BIA and contract schools. A person not familiar with BIA's administration of education programs would be surprised that such a detailed Act of Congress would be considered. BIA's record of hostility to Indian Education Programs, its failure to implement many of the 1978 statutory mandates, and the failure of BIA field personnel to support education programs requires this detailed Congressional direction.

SECTION BY SECTION ANALYSIS

Section 1. Self explanatory.

MINIMUM ACADEMIC STANDARDS

Section 2(a) requires that the BIA minimum academic standards include a provision for immunization for childhood diseases, including provision for in-school immunization, where necessary.

> Comment: We believe the provision is desirable. The provision requires, however, that the standards be "developed in coordination with Indian tribes and affected local school boards". Coordination with Indian tribes and affected local school boards should be limited to major matters. It seems unduly cumbersome to require formal coordination with tribes and school boards to develop what should be a straight forward requirement.

> Comment: Section 2(b) weakens the role of tribal governing bodies or designated local school boards and we are opposed to it. Under existing law, the tribal governing body, or local school board if so designated by the tribal governing body, has authority to waive, in part or in whole, minimum academic standards established by the Secretary where the standards are deemed to be inappropriate or ill conceived. The tribal governing body or local school board can revise the standards to take into account the specific needs of the tribe's children, and the revised standards "shall be established by the Secretary" unless they

are specifically rejected for "good cause." Proposed Section 2(b) would repeal the power of local school boards and tribal governing bodies to revise the standards and replace it with the power to make proposals to the Secretary which may or may not be adopted.

Section 2(c) concerns contract schools. It requires the contract schools to be in compliance with the minimum academic standards within two years, or obtain accreditation, or be a candidate for accreditation. It also requires that the Bureau establish uniform fiscal control and fund accounting procedures for all contract schools comparable to those used by Bureau schools.

Section 2(d) applies to both Bureau and contract schools. It provides that failure of a Bureau operated or contract school to meet the minimum academic standards shall not serve as a basis for taking personnel action against any individual if inadequate resources were provided, if the Secretary has not submitted to the appropriate committees of the Congress a detailed plan to bring all Bureau and contract schools up to the level required by the applicable standards, and if the Secretary has not requested sufficient funds to cover the cost of meeting the standards.

Comment: As drafted, it is not clear whether it is sufficient if one of the conditions are met or whether all of the conditions must be met in order that the Secretary will not be able to take personnel action against individuals.

SCHOOL CLOSURES

Section 2(e) concerns closure and consolidation of schools. It provides that unless a specific Act of Congress is passed, no school operated by the Bureau of Indian Affairs on January 1, 1984 may be closed or the program curtailed unless done according to certain detailed requirements. If enacted, this would mean that the Intermountain School in Brigham City, Utah which is slated for closure could not be closed as planned. Similarly, the Chuska and Tohatchi Schools could not be consolidated as planned.

Comment: Because the Chuska and Tohatchi Boarding School Boards have both approved a planned consolidation, a specific exception should be inserted for the Chuska and Tohatchi Schools at Tohatchi, New Mexico.

Section 2(e) directs the Secretary, by regulation, to promulgate standards and procedures which require that whenever closure or consolidation is under consideration or review by BIA, then the affected tribe, tribal governing body, designated local school board and parents must be notified and be kept fully

and currently informed with respect to such consideration or review. Prior to ordering a school closing or consolidation, the Secretary is required to make a study of each Indian child's educational and (where applicable) social needs and insure that adequate alternative services are guaranteed. The study must include a description of the consultation conducted by the potential service provider, current service provider, parents, tribal representative of the tribe involved with regard to each child. Further, before taking any action to close or consolidate any school, the Secretary must make a report to the Congress describing the plans, and no action may be taken until the end of the academic year following the academic year in which the report to the Congress is made.

> Comment: No provision is made for genuine emergency closures for safety reasons. In order for the law to be workable, some such provision is required. In addition, at page 5, line 7, it would seem more practical to consult with the local school board of the school currently attended by the child rather than the tribal representative of the tribe involved with respect to each child's educational and social needs.

SCHOOL BOUNDARIES

Section 3 requires that the Secretary establish separate geographical attendance areas for each Bureau school. The Secretary may not establish an attendance area until the tribal governing body or the local school board concerned (if so designated by the tribal governing body) have been given one year to propose such boundaries. The proposed boundaries must be accepted unless the Secretary finds that the boundaries do not reflect the needs of the Indian students to be served or do not provide adequate stability to all the programs affected.

> Comment: Page 6, line 4, should include a provision for coordination by the agency school board of local school board proposals.

Section 3 requires that in the case of nonresidential programs the attendance areas shall not overlap, that with respect to dormitory programs the attendance areas may be established to cover a nonexclusive area. It further requires that the attendance areas shall, to the greatest extent possible, permit a student to continue his or her education at a single school.

> Comment: The education at a single school provision, while desirable in most instances, may not be desirable in every instance. A statutory requirement would seem to preclude needed flexibility.

Comment: At page 7, line 7, there appears to be a typographical error. The reference to Subsection (a) should read Subsection (c).

Specific attendance areas are required for Bureau operated schools but not for Bureau funded contract schools. BIA day schools must have attendance areas which do not overlap. The statute requires that the Secretary "coordinate" attendance areas with those determined by schools funded under contract with the Bureau.

Comment: There would seem to be no principled reason to distinguish between Bureau operated and Bureau funded schools with respect to attendance areas. Both types of school are rewarded if they succeed in attracting a greater rather than smaller number of students. Accordingly school boards at both institutions attempt to maintain as broad an attendance area as possible. A small number of Bureau operated and contract schools have educational programs designed to meet special needs. An exception should be made for these schools. With respect to schools operating a general program, the proposed statutory discrimination would tend to encourage Bureau operated schools to convert to contract schools in order to preserve their student base. This would seem to be the wrong reason to convert to contract status. Accordingly, page 7, line 4 should be amended to read "determine attendance area for Bureau operated and funded schools."

Comment: A further requirement for attendance areas is that they preserve current or historical service patterns "to the greatest extent possible." The current service pattern is open enrollment. This provision would be difficult to apply. Also, it is likely to be unduly restrictive. It should be deleted.

BUREAU OF INDIAN AFFAIRS EDUCATION FUNCTIONS

Section 4 contains a provision requiring that the Director of the Office of Indian Education Programs report "directly and solely" to the Assistant Secretary for Indian Affairs.

Comment: This section appears to be an effort to give BIA education functions a status equal to BIA noneducation functions. At present, the Director of the Office of Indian Education Programs has been reporting to the Deputy Assistant Secretary for Indian Affairs who also is responsible for managing the operations of BIA. Thus BIA education is subordinated. The objective of Section 4(a) could be achieved by creating a position of Deputy Assistant Secretary for Indian Education. Also, the Deputy Assistant Secretary for

Education could supervise support functions, not only for education but for other Bureau functions as well. Few people realize that almost 70% of all BIA personnel are educators and that almost 80% of BIA facilities are schools. Thus it makes a great deal of sense to have education provide support services for the entire Bureau.

Comment: At page 8, line 20 the words "is amended" should be inserted after 1126(b) in order for the sentence to make sense.

Section 4(c) provides that education personnel located in Bureau agencies shall "provide all services and support functions for education programs in the areas of procurement, budgeting, and personnel." This is intended to require that employees providing education support functions in the areas of procurement, budgeting and personnel whether located at Bureau Area offices or at Bureau Agency offices shall be transferred to Agencies and placed under the supervision of the Agency Superintendent for Education.

Comment: The continuing hostility exhibited by BIA Area Directors toward education makes this provision essential. Hopefully, it can be implemented in a way which can also achieve the Assistant Secretary's and Tribal Chairmen's Association's objective of reducing Area Office staffs. A specific time limit should be given for the implementation of this provision.

Comment: The provision, as drafted, could be construed narrowly to apply only to existing employees in Bureau Agencies. Modification to the statutory language or a clear statement of intent in the legislative history would remove any conceivable ambiguity.

Section 4(d) establishes within the Office of Indian Education Programs a facilities division which shall be responsible for maintenance, construction, repair, renovation and alteration of all facilities and physical plant related to education programs.

Comment: A specific time limit should be given to the Secretary to establish the facilities division, for instance six months after the enactment of the Indian Education Amendments of 1984.

ALLOTMENT FORMULA

Section 5 modifies the factors the Secretary is required to consider in establishing the ISEF formula. It adds the following three items: (1) special transportation and other costs of isolated and small schools; (2) the costs of boarding arrangements, where determined necessary by a tribal governing body for designated

local school boards; and (3) costs associated with greater lengths of service by educational personnel.

> Comment: As drafted this section does not require a review or revision of the ISEF formula at any specific time. A specific time line should be included. Special transportation expenses are not limited to small schools. Transportation should be separated from the costs of small schools. Finally, it is unclear whether the "costs of boarding arrangements" apply to the periferal dormitory program.

Section 5(b) requires that all Bureau and contract schools which receive ISEF funds shall be treated "similarly" with respect to the distribution of funds appropriated for operations and maintenance expenses.

> Comment: The section would be more precise if it required that the Secretary within a stated time limit (e.g. 6 months) "establish a formula for the equitable distribution of operations and maintenance funds."

The next subsection concerns school board expenses. It provides that all Bureau and contract schools receiving ISEF funds:

> Shall receive an equal amount as an allowance for local school board training and activities including, any other provision of law notwithstanding, meeting expenses and the cost of membership in or support of organizations engaged in advocacy activities on behalf of Indian education.

> Comment: We recommend that the section be redrafted as follows:

> > (1) Bureau and contract schools receiving ISEF funds and Agency school boards shall receive an equal amount as an allowance for school board expenses, school board training and technical assistance activities. School board expenses may include payments for meeting expenses, consultants, attorneys and the cost of membership in or support of professional organizations. Each school board shall allocate its allowance for school board expenses in the formulation or modification of its local financial plan; provided, however, that if in the judgment of the school board the allowance is insufficient for school board expenses, then the school board or contract school board may utilize program funds for such purpose.

The final provision of Section 5 is intended to provide that all contract schools receive sufficient funds for administrative and indirect costs without reducing funds available for school operations.

Comment: As drafted, the section is sufficiently ambiguous and imprecise as to virtually guarantee that it will generate a law suit. The "amount which would be expended by the Secretary" can be calculated in any number of ways, and for this reason greater specificity is required.

UNIFORM DIRECT FUNDING

Section 6 of the bill authorizes forward funding of BIA education. It also provides that the amounts appropriated in any fiscal yerr may be obligated by the affected schools on October 1 of the fiscal year without further action by the Secretary. Moreover funds for one fiscal year may be carried over through six months of the succeeding fiscal year.

Section 6 contains a provision which authorizes the supervisor of each school receiving ISEF funds, subject to school board approval, to expend ten percent of the funds allotted to procure supplies and equipment, with or without competitive bidding. The section apparently permits the waiver of federal procurement laws for the expenditure of ten percent of each school's budget.

Comment: A provision permitting direct purchases at the local school level is needed if BIA schools are to run efficiently. The section, however, is not as precise or as specific as it ought to be. As drafted, it could lead to disputes as to its effect. We recommend the following language:

The Supervisor of each school receiving funds under this section shall, subject to specific school board approval by an action of record, have authority to expend up to ten percent of the funds allotted to the school to procure school services, supplies, goods and equipment. Expenditures under this subsection may be conducted with or without competitive bidding and without regard to procedures required by any law or regulation governing procurement by federal agencies.

APPEALS FROM ACTIONS OF SCHOOL BOARDS

Section 7 provides a procedure by which appeals may be taken by BIA education officials from decisions of local school boards. In each instance the school board is given an opportunity to state its position in writing prior to any decision. Further, the deciding official must render a written opinion with the decision of the appeal.

Comment: On page 13, line 18; page 14, line 13; page 15, line 4 and page 15, line 21 insert the phrase "or not overturning" after the word "overturning."

MANAGEMENT INFORMATION SYSTEM

Section 8 amends the existing law which requires that the Secretary establish within the Bureau a computerized management information system. The existing law provides that the MIS system will provide information to all agency and area offices of the Bureau as well as to the Office of Indian Education. Section 8 would limit the computerized MIS system to the Office of Indian Education.

AUDIT

Section 9 of H.R. 5190 would require that the Inspector General of the Department of Interior establish a system to insure financial and compliance audits are conducted at each Bureau school at least once every three years. The audits would be based on the extent to which the school has complied with its local financial plan.

REGULATIONS

Section 10 requires that regulations implementing this law must contain citations to specific sections of a statute or other legal authority upon which they are based.

VOLUNTARY SERVICES

Section 11 of the bill specifically authorizes the Bureau or the Office of Indian Education, subject to local school board approval, to accept voluntary services on the behalf of Bureau and contract schools.

Comment: Without this express authorization, Bureau or contract schools may not accept voluntary services. The section could be improved if it also authorized Bureau agencies to accept voluntary services with the approval of the Agency school board. This could be achieved by the deletion in line 6, page 17 of the word "local."

OTHER NEEDED PROVISIONS

H.R. 5190 does not contain any provision dealing with personnel. It contains no provision placing wage grade employees of Bureau schools under the contract system. It contains no provision authorizing local school boards to waive Indian preference with respect to any applicant for employment. It contains no provision prohibiting the Bureau from imposing FTE personnel ceilings on BIA schools. It contains no provision limiting the amount of overtime which must be paid to school employees. It contains no provision defining clerk and secretarial positions in education offices as "education positions." It contains no provision allowing local school boards to set wages at a sufficiently high level to attract and retain the most qualified teachers.

Comment: Each of the provisions mentioned in the foregoing paragraph has been recommended by school board members. The Committee on Post Office and Civil Service rather than the Committee on Education has jurisdiction over personnel matters. The staffs of the two Committees have been working on these issues. The provisions mentioned above are needed and should be added to H.R. 5190.

Comment: H.R. 5190 contains no provision for the enforcement of the time lines provided in the Bill. The 1978 law required that the Secretary or Assistant Secretary for Indian Affairs carry out certain actions within a specified time limit. In many cases, the deadlines were not met. There is no reason to expect any more complete compliance if H.R. 5190 is enacted into law. Measures can be included which would insure that time lines are met. We suggest the following:

> Any United States District Court shall have jurisdiction to hear an action brought by any local school board to compel implementation of each measure required in Title XI of the Education Amendments of 1978 and the Amendments thereto. In the event judgment is rendered in favor of any local school board with respect to any part of any cause of action, then each federal official responsible for the failure to implement said measure personally shall be jointly and severally liable for the payment of plaintiffs attorney's fees and costs.

If this provision were added to H.R. 5190, Congress could be reasonably assured of prompt and complete implementation.

94-977 O—84——4

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, DC, April 25, 1984.

Hon. CARL D. PERKINS,
Chairman, Committee on Education and Labor,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: During my testimony of April 9, 1984 before the Subcommittee on Elementary, Secondary, and Vocational Education on H.R. 5190, several questions were raised concerning specific provisions of the bill.

I am most pleased to respond to these questions and provide clarifying and impact data describing the effect and cost of certain provisions.

Sincerely,

JOHN W. FRITZ,
Acting Assistant Secretary, Indian Affairs.

Attachments.

Question. Mr. Secretary, you mentioned in your testimony a new effort to develop a Central ADP System, Bureau-wide. Could you comment further in your efforts to date, and how the Office of Education fits into your plans. Could you supply more details to the Committee and me in writing prior to our markup.

Answer. The Bureau's Office of Data Systems [ODS] has been established and given a mandate to manage and improve the operation of the Bureau ADP activities. One important facet is the central ADP computer facility in Albuquerque. This facility will test bureau-wide applications, and provide technical assistance to Bureau programs, Areas and Agencies in their implementation and operations of these applications. Basically, the Bureau will operate a standardized computer system for all of its bureau-wide requirements. The Bureau will utilize the Area Agency Data Information Exchange [AADIX] network and central support activities in Albuquerque. The strategy and approach being pursued by ODS is to implement fully operational Information Management Centers [IMC's] in each of the six major Area Offices and to incorporate the other six Area Offices, along with the center in Albuquerque, to provide a uniform, cost effective, quality controlled data processing system for each of the Bureau's progams.

To date, standardized hardware and software have been put in place at three IMC's (Albuquerque, Phoenix, Aberdeen). The three remaining IMC's are in the process of converting from their present configuration to the Bureau's standard configuration of hardware and software.

The central facility has tested and distributed the MECC (Minnesota Education Consortium Component) higher education system in two Areas (Albuquerque and Phoenix) since ODS was established.

The Bureau has invested several million dollars over the past 3 to 4 years in its data processing network. With the establishment of ODS, we hae initiated a full scale commitment to servicing all Bureau programs, Areas and Agencies. A major user of the network and the central testing facility at Albuquerque is the Office of Indian Education Programs. To allow that office to establish an independent ADP program would introduce a severe constraint on the overall ability of ODS to successfully achieve its mission. It would also create an in-house fragmentation of ADP management and operation that would reduce the opportunity for cost control and effective management provided by the central ADP management and computer network.

The Congressional mandate to the Bureau to take control of its ADP management and operation is being aggressively implemented. We are already realizing some cost savings through cost controls, e.g., the return of 28 B-94 systems to Burroughs. We have developed a cost accounting system to gain better control and to improve reporting to the Congress and others. At this point, the Bureau needs to maintain these initiative and to contain cost. The allowance of exceptions to the policies and principles being instituted would jeopardize the Bureau's effort.

Question 1. The Bureau has considered, in the past, what it would cost if the Office of Indian Education Programs were to have its own administrative services and thereby by independent of the Bureau of Indian Affairs. Based on past studies (updated for this effort) and a series of assumptions, the Bureau has completed a first phase analysis identifying the necessary resources that would be needed to establish a parallel administrative structure for education. The costs of establishing such a structure are based upon the following assumptions:

1. It was assumed that the OIEP must have sufficient resources to enable it to be complete by responsive to all legal requirements. Thus, a central office structure

with appropriate management and operations capability in the administrative functions was included in the analysis.

2. It was assumed there would be mid-level management in the field to be responsive to the needs of the education operations and organized to serve geographic areas: thus, twelve mid-level management structures are continued.

3. No start up cost—of a one-time nature—were included in this effort but these costs and the lead time necessary to bring new systems, facilities, and personnel on line would be substantial.

4. No costs were included for a separate management information system (computers, software, data, personnel).

Having stated these qualifiers, we estimate that a parallel and totally separate, education bureau would require an additional $10,824,300 and 373 positions to accommodate their administrative servicing needs.

Mr. Secretary, I note that H.R. 5190 allows for procurement authority without competitive bidding.

Question. Do you see any problems with this provision if enacted?

Answer. Yes. Noncompetitive procurement generally is more expensive to the Government than competitive procurement; is an invitation to waste; puts unwarranted pressure on Government personnel to favor one vendor over another and as such, opens Government and vendor personnel to charges of favoritism, fraud and waste of the taxpayer's money.

Question. Have you received a written legal opinion regarding procurement without competing in light of the Federal Property and Service Act of 1949, as amended.

Answer. Yes. The Solicitor's office has concluded that Section 6 (3) of the H.R. 5190 contravenes the policy favoring competition established by the Federal Property and Administrative Services Act of 1949, as amended. (Attached is a copy of their opinion.)

Question. Also, have you recently had problems at the Navajo Reservation concerning year end money purchases? Could you comment at this time.

Answer. Yes. A recent audit by the Inspector General cited the noncompetitive procurement of a considerable number of gift certificates by certain schools within the Navajo Area Office. The audit concluded that the procurement of the gift certificates was an attempt to circumvent the restriction on the use of annual funds by year end spending. Although corrective action has been taken, resolution of the problem was very time consuming.

U.S. Department of the Interior,
OFFICE OF THE SOLICITOR,
Washington, DC, April 20, 1984.

MEMORANDUM

To: Deputy Assistant Secretary for Indian Affairs.
From: Associate Solicitor, Division of General Law.
Subject: Non-Competitive Provisions of Section 6(3) of H.R. 5190, 98th Congress, 2d Session.

You have asked for our comments on section 6(3) of H.R. 5190, which would allow the purchase of supplies and equipment by school supervisors without competitive bidding.

The Federal Property and Administrative Services Act of 1949, as amended, 41 U.S.C. 251, *et seq.* establishes an overall policy in favor of competition. The purpose of the policy is to obtain the lowest price for Government purchases and give contractors a fair and equal opportunity to bid.

Section 6(3) of H.R. 5190 contravenes that policy since it permits purchases without competitive bidding for all purchases to which it applies. It is unnecessary to require this total deviation from Federal procurement policy since the Federal Property and Administration Services Act already provides many exceptions to advertising, where appropriate, such as emergencies, small purchases, impractical circumstances, etc.

We therefore recommend that section 6(3) be deleted.

MARIAN BLANK HORN.

Mr. KILDEE. I would now ask Mr. Fritz to come to the table. In view of the number of witnesses and nature of this hearing, I would ask that all written statements be submitted for the record where they will be printed in full, and that the witnesses, where possible, summarize their remarks.

Mr. Fritz, you are always welcome before this committee.

STATEMENT OF JOHN FRITZ, DEPUTY ASSISTANT SECRETARY FOR INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR, ACCOMPANIED BY DR. KENNETH ROSS, ACTING DIRECTOR, INDIAN EDUCATION PROGRAM, BUREAU OF INDIAN AFFAIRS

Mr. FRITZ. Mr. Chairman, thank you very much. On behalf of myself and Dr. Ken Ross, who is sitting to my right, the Acting Director of Indian Educational Program for the Bureau of Indian Affairs. We appreciate the opportunity to appear here before you, and present the views of the Department of Interior on H.R. 5190, a bill "To amend title XI of the Education Amendments of 1978 relating to Indian education, and for other purposes."

I have a complete written statement that I would like entered the record, if we might. If I can give a short summary of that statement, we reviewed H.R. 5190, and by and large we agree with its intent, and that is to identify the obstacles, to get rid of them to the extent that we can, and to move ahead with truly making Indian education a locally controlled and managed initiative to the greatest extent that we possibly can.

I think that by virtue of the significance of this piece of legislation and the limited amount of time that we had to work on it—and I apologize to you, Mr. Chairman, for only delivering our statement and our proposed substitute amendment this morning—I would certainly ask that we have an opportunity to work with your committee in resolving the various issues raised by both your bill and our proposed substitute.

But I would like, in addition to having the statement read into the record, to make a few additional comments. The prepared statement covers the specific provisions of H.R. 5190, but in addition I would like to make some observations about its scope and the expression of its legislative philosophy.

Issues such as academic standards and school boundary are important supplementary and supporting elements of education policy, but the manner in which they are treated by H.R. 5190, as we discussed with the committee staff, is essentially procedural rather than substantive. We view the standards and boundaries which would become effective under the proposed legislation, as possibly weakening the Department's ability to use them as effective tools for enhancing Indian education at the local level.

So, therefore, we have suggested changes to the sections dealing with the standards and boundaries which we believe would strengthen their use as management tools in the service of substantive policy. The fact that the bill deals with process or procedure, rather than substantive education policy, is somewhat troubling to me, because I would like to work with members of this commmittee, with those in Indian country, its leaders and its education leaders, to see that our attention and our collective energies are focused upon solutions to the more fundamental educational problems which we face in Indian education.

As you know, last year the National Commission on Excellence in Education, including a former member of this committee, Mr. Al Quie, who was so extremely instrumental in the passage of Public

Law 95-561, issued a report called a Nation at Risk, the Imperative for Educational Reform.

Let me cite a few of the Commission's principal findings: About 23 million American adults are functionally illiterate; 13 percent of all 19-year-olds are functionally illiterate; and among minority youth this figure may approach 40 percent. The average achievement scores of high school students on standardized tests are now lower than 25 years ago, college boards that is, and the scholastic aptitude test scores have steadily declined in the last two decades.

Performance in math, reading and science are continuing to fall. Remedial courses in colleges, the military and industry have expanded, in an effort to provide basic competence. Our education system is simply not preparing young people with the skills they will need to perform in the job market, and for the Nation to compete in the world economies.

These examples are merely symptomatic of the grave problems and issues we must address in American education, and especially in the education of American Indian youth. These are the fundamental and substantive issues of education policy and performance to which I referred earlier.

The Commission documented the problem, and outlined an agenda for reform. It seems to me, Mr. Chairman, that together, working with the representatives of Indian country, we should be analyzing that agenda, and applying it to our programs currently. Instead, we are approaching a very timely issue, and one of a very sensitive nature, which is to focus on the support activities of our educational institutions.

But we are remaining virtually silent on the real issue at stake for Indian child today. From my perspective, that issue is a very simple one: Are we providing our Indian children, a good education in these schools?

I believe that we must consult with Indian people, Indian educators, and Indian students on the provisions of this bill, so that we can start incorporating substantive changes into our provision of services to Indian country. Time simply has not allowed us to do so.

We also need to address the question of what Indian parents believe is paramount in the education of their children. Frankly, when I look at the issues surrounding this process, I am often taken back to the charge and to the challenge given me by an elderly Indian gentleman from the plains, when I took this job.

Essentially, his message to me boiled down to a very succinct statement. He said:

> I feel that we American Indians need more teachers and less bureaucrats, fewer clerks, fewer people who chase paper, and more people who understand the challenge of educating the truly wonderful young human mind.
>
> We need to find and inspire teachers and administrators to greatness. We need to find people who understand the great gift of teaching, in order that others might learn, and we need to find teachers who love children as well as challenges. We need to find people with a desire to excel, and a willingness to endure. We need to have commitment to excellence in the classroom as well as our life on the reservation.

From my standpoint, if we had all these desires and if we met all the dreams and the hopes of this man, working in conjunction with the communities, we could rededicate ourselves to truly approaching the education of American Indian youth in a fashion which all

of us—the executive branch, certainly the legislative branch, and certainly Indian country—could be proud of.

Mr. Chairman, that concludes my statement. I thank you for the time, and will be happy to take any questions.

[Prepared statement of John Fritz follows:]

PREPARED STATEMENT OF JOHN FRITZ, DEPUTY ASSISTANT SECRETARY, INDIAN AFFAIRS (OPERATIONS) OF THE DEPARTMENT OF THE INTERIOR

Mr. Chairman, and members of the Subcommittee, I am pleased to present the views of the Department of the Interior on H.R. 5190, a bill "To amend Title XI of the Education Amendments of 1978 relating to Indian Education, and for other purposes."

We have reviewed H.R. 5190 and we agree with its intent. However, upon examination of its provisions, we find that the means by which its intent would be accomplished do not quite match the thoughts of the Department. The bill deals with procedural issues in the area of Indian education. We have not had sufficient time to prepare the thorough analysis and response which the subject warrants. Therefore, we would request additional time to complete this work. In doing so, we would be more than happy to work with the Subcommittee staff. In the meantime, for the committee's purposes, we offer for your consideration a substitute bill which we feel would accomplish the purposes of the original version while suporting the concepts which have been articulated by Congress through its appropriations process for the last several years, as well as addressing administrative processes and weaknesses we have identified. With your permission, I shall discuss our bill, and the rationale for any changes that have been made in H.R. 5190.

Section 2(a) of our bill is substantially identical to that of H.R 5190. It would provide for a school immunization program to be developed in coordination with Indian Tribes, affected local school boards and the Indian Health Service (IHS) of the Department of Health and Human Services. We strongly support this idea. In fact, last year the IHS and the Bureau developed and implemented a joint program for in-school immunizations. This provision would broaden and strengthen that program.

Section 2(b) differs from that of H.R. 5190 in that it would not provide for a waiver of school standards by a tribal governing body or local school board. We believe that such standards are vital and should not be waived. Our provision would allow the appropriate Indian community to propose supplemental standards in order to effectively meet the needs of the children of that community.

Section 2(c) is similar to H.R. 5190 with one exception. You will note that we have strengthened that provision by allowing the Secretary to decline to enter contracts with tribes for new schools where students are adequately served by public, or Bureau schools, where a suitable permanent facility is not available to house the school, or when enrollment projections do not meet minimum requirements. We believe this amendment would meet the stated concerns of the Appropriations Committee regarding the proper use of funds for programs and facilities and more importantly, would result in better educational services for your Indian youth.

You will note that we have deleted Section 2(d) of H.R. 5190. That section would have prohibited any adverse action against any employee based upon failure related to inadequate resources or based upon failure of the Secretary to request sufficient funds to cover the costs of meeting standards at the school concerned. Language contained within the proposed regulations entitled "Minimum Academic Standards and National Criteria for Dormitory Situations", Subpart G—Compliance and Waiver 36.60(f) established a condition that when a school is not in compliance for two consecutive years due to conditions which can be corrected locally, appropriate personnel actions will be initiated at all applicable levels of school administration and non-compliance may be acceptable grounds for dismissal. Therefore, this section of the proposed legislation is not necessary because it is covered in the pending standards. The language of H.R. 5190 could result in the inability of the Bureau to enforce appropriate personnel action where necessary.

We have also deleted Section 2(e). That section would provide a timetable and procedures to be followed in any effort to close or consolidate any school. We see closure and consolidation as a responsibility of the Executive Branch in carrying out Congressional intent. In addition, we think that this section is ambiguous in that it is not clear whether its applicability is limited to Federal initiatives or includes tribally requested closures or consolidations. Also, the procedures, as drafted, would greatly delay and otherwise hinder the Department's ability to carry out its education responsibilities. Further, we believe that the current consultation process in all

cases is sufficient and flexible enough to meet the unique circumstances of each situation.

In our proposed Section 3, Section 1124(a) has been amended to include contract schools. We have also deleted the amendment of Section 1124(b) because the Office of Indian Education Programs currently has requirements for the establishment of school attendance boundaries as a part of the Indian School Equalization Formula (25 CFR 39.20) under the Statutory Authority of Public Law 95–561, and has included such language under the proposed "Minimum Academic Standards and National Criteria for Dormitory Situations". Under these procedures attendance boundaries for all schools have already been established, with the exception of Navajo and off-reservation boarding schools. Attendance areas for the latter will be established by June, 1984. Therefore, we believe this section is unnecessary. Moreover, we believe such administrative determinations are more properly the prerogative of the Executive Branch.

Also in Section 3, the amendment of Section 1124(c) has been redesignated Section 1124(b) and amended by adding a new paragraph (5) at the end thereof. Paragraph (5) would provide that attendance areas of Bureau and contract schools would include any area within up to one and one-half miles of a public school when bus transportation is not provided, or within up to 20 miles of a public school where bus transportation is provided unless the Secretary certifies that the public school does not have the capability to absorb such Indian students residing within public school attendance areas. We effected this change because it is extremely difficult to budget and plan for the delivery of quality educational services when students have the option of attending any one of several schools. Duplication of services diminishes scarce educational resources when public and BIA schools compete for the same students.

We have deleted the amendment to Section 1124(d) because it is broadly drawn and would effectively negate the intent of the preceding paragraphs.

We have deleted Section 4 in its entirety. The present language in Public Law 95–561 is sufficiently broad to provide control over the education program decisions that result in the processing of administrative actions by those organizations under the supervision of the Office of the Assistant Secretary for Indian Affairs. The Director, Office of Indian Education Programs has been delegated the Secretary's authority to supervise, manage, and expend funds appropriated for Indian education; to develop budgets and approve fiscal plans; to allocate Appropriations to schools, agencies, and area offices, and to initiate and approve those documents which must be processed by the administrative organizations of the Bureau.

In addition, the Office of Indian Education Programs already controls its own personnel recruitment and hiring system. its own fund allocation system, and its own Self-Determination Act contract application approval system under the authority provided by Public Law 95–561. Such a further separation of the administrative functions would require the provision of additional staff and fiscal resources to merely serve the needs of the educational bureaucracy, not our students, at a time of fiscal constraint throughout the Federal Government.

We have deleted Section 5 in its entirety. That section would have provided contracting authority to the Director of the Office of Indian Education Programs and would have provided for Area and Agency education personnel to supply all services and support functions for their respective Education programs in the areas of procurement, budgeting and personnel. This approach is inconsistent with the Government's thrust to streamline duplicative administrative services.

Our Section 4 is generally identical with Section 6 of H.R. 5190; we wholeheartedly endorse this concept. However, because of the complexity of gearing up for such a transition and the implementation of the new provisions, we ask for more time to perfect the provisions of this section. We are willing to work closely with the Subcommittee staff in accomplishing this positive goal for Indian education.

Please note that we have deleted Section 1129(3) contained in under Section 6 of H.R. 5190. Procurement without competitive bidding is contrary to prudent business practice and government policy and we do not believe it is necessary.

Our Section 5 is identical to Section 7 of H.R. 5190.

We have deleted Section 8 of H.R. 5190. As you are aware, Congress has mandated that the Bureau establish a centralized ADP system. Working with Congressional Committees, we are well along in this effort. Isolating a separate Management Information System for the Office of Indian Education Programs would be extremely costly and counter-productive at this juncture.

We have deleted Section 8 of H.R. 5190. As you are aware, Congress has mandated that the Bureau establish a centralized ADP system. Working with Congressional Committees, we are well along in this effort. Isolating a separate Management In-

formation System for the Office of Indian Education Programs would be extremely costly and counter-productive at this juncture.

We have deleted Section 9 of H.R. 5190. Pursuant to the provisions of the Inspector General Act of 1978, the Inspector General has more than adequate authority to insure that financial compliance audits are conducted throughout the Indian education system. We think any additional legislative authority is unnecessary and will needlessly complicate and confuse the legal authority for such audits.

Our Section 6 is identical to Section 10 of H.R. 5190.

We have deleted the provision for voluntary services in Section 11 of H.R. 5190 even though we agree with the concept. However, as we pointed out earlier, we have had insufficient time to develop an adequate statutory framework to provide for such services and to thoroughly analyze its effect on existing statutory authorities. We need additional time to arrive at a workable solution for this.

This concludes my prepared remarks. I would be happy to answer any questions you or members of the Subcommittee may have.

A BILL To amend title XI of the Education Amendments of 1978 relating to Indian education, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled.

SHORT TITLE; REFERENCE

SECTION 1. (a) This Act may be cited as the "Indian Education Amendments of 1984."

(b) Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of title XI of the Education Amendments of 1978 (25 U.S.C. 2001 et seq.).

STANDARDS

SEC. 2. (a) Section 1121(b)(2) is amended by adding at the end thereof the following: "Such standards shall include a requirement, developed in coordination with Indian tribes, the affected local school boards, and the Indian Health Service of the Department of Health and Human Services, State Health Departments and the Centers for Disease Control immunization for childhood diseases, including provisions of in-school immunization, where necessary."

(b) The first sentence of section 1121(d) is amended to read as follows: "(d) A tribal governing body, or the local school board if so designated by the tribal governing body, shall have the local authority to propose supplementary standards that take into account the specific needs of the children of the tribe. Such proposed supplementary standards shall be established by the Secretary, subject to the availability of other funds, unless specifically rejected by the Secretary for good cause and communicated in writing to the affected tribes or local school board, which rejection shall be final."

(c) Section 1121(e) is amended—

(1) by inserting "(1)" after "(e)";

(2) by striking out the second sentence thereof; and

(3) deleting the period and adding a semicolon after the word "school" in the last sentence thereof and adding the following proviso: *"Provided:* that the Secretary shall decline to enter into a contract with a tribe or tribes for the establishment or operation of a school not currently operated by the Bureau of Indian Affairs if he determines that:

"(1) students are adequately served by public or Bureau schools;

"(2) a suitable permanent facility is not available to house the school; or

"(3) enrollment projections do not meet minimum requirements." and,

(4) by adding at the end thereof the following new paragraph:

"(2) Within two years of the initial contract for the provision of educational services under the Indian Self-Determination and Education Assistance Act—

"(A) Each such school shall (i) be in compliance with the standards prescribed under subsection (a), or (ii) have obtained accreditation, or be a candidate for accreditation, with one of the accrediting agencies recognized by the Secretary of Education or the State in which it is found; and

"(B) The Secretary shall approve fiscal control and fund accounting procedures, which are to be established by all contract schools, which yield financial data comparable to that use by Bureau schools."

SCHOOL BOUNDARIES

SEC. 3. Section 1124 is amended to read as follows:

"SCHOOL BOUNDARIES

"SEC. 1124. (a) The Secretary shall, in accordance with this section, establish separate geographical attendance areas for each Bureau and contract school.

"(b) In any case where more than one school operated or funded by the Secretary is located on an Indian reservation, the attendance areas established under this section—

"(1) in the case of nonresidential programs, shall not overlap those of public schools, and shall, together, cover the entirety of such reservation;

"(2) shall be established after due consideration of relevant transportation costs;

"(3) shall, to the greatest extent possible, permit a student to continue his or her education at a single school;

"(4) with respect to dormitory programs, may be established to cover a nonexclusive area, as required by reason of such factors as a social or educational need or isolation, or both; and

"(5) shall not include any area within one and one-half miles of a public school when bus transportation is not provided, or within 20 miles of a public school where bus transportation is provided unless the Secretary certifies that the public school does not have the capability to absorb such Indian students residing within public school attendance areas".

"(c) In no case shall the category regard a public attendance area as being exclusive if the Secretary determines, on the basis of past practices or reasonable evidence concerning future practices, that a local school district is unable or unwilling to provide full and equal service (as provided to all of its students for all activities) throughout the year or to provide programs that meet students' particular needs."

"(d) With respect to multitribal boarding schools located off reservation, the Secretary shall establish specific criteria for attendance at each school which shall include: the unavailabiltiy of an appropriate public school or day school; the unavailability of special vocational or social service programs required by the student; and other factors which the Secretary may deem appropriate, including parental desires."

UNIFORM DIRECT FUNDING

SEC. 4. Section 1129(a) is amended—

(1) by striking out "section 1128," and all that follows in the second sentence and inserting in lieu thereof "section 1128";

(2) by inserting "(1)" after "(a)" and adding at the end thereof the following:

"(2)(A) For the purpose of affording adequate notice of funding available pursuant to the allotments made by this section, amounts appropriated in an Appropriation Act for any fiscal year shall become available for obligation on July 1 of the fiscal year for which they are appropriated without further action by the Secretary, and shall remain available for obligation through the succeeding fiscal year. In order to effect a transition to the forward funding method of distribution described in the preceding sentence, there are authorized to be appropriated, in an Appropriation Act or Acts for the same fiscal year, two separate appropriations for such allotments, the first of which shall not be subject to the preceding sentence."

"(B) The Secretary shall, on the basis of the amount appropriated in accordance with this paragraph—

(i) give notice on July 1 of the fiscal year for which the funds are appropriated, allotments to each affected school made under this section of 75 percent of such appropriation; and

(ii) give notice following the fall student count of the allotments to be made under this section of the remaining 25 percent of such appropriation, adjusted to reflect actual student attendance."

APPEALS FROM ACTIONS OF SCHOOL BOARDS

SEC. 5. (a) Section 1129(b) is amended by striking out the last sentence and inserting in lieu thereof the following: "The suprevisor of the school may appeal any such action of the local school board to the superintendent for education of the Bureau agency by filing a written statement describing the action and the reasons the supervisor believes such action should be overturned. A copy of such statement shall be submitted to the local school board and such board shall be afforded an opportu-

nity to respond, in writing, to such appeal. After reviewing such written appeal and response, the superintendent may, for good cause, overturn the action of the local school board. The superintendent shall transmit the determination of such appeal in the form of a written opinion to such board and to such supervisor identifying the reasons for overturning such action."

(b) Section 1131(d) is amended by striking out paragraphs (2) and (3) and inserting in lieu thereof the following:

"(2)(A) The supervisor of a school may appeal to the appropriate agency superintendent for education any determination by the local school board for the school that an individual be employed, or not be employed, in an education position in the school (other than that of supervisor) by filing a written statement describing the determination and the reasons the supervisor believes such determination should be overturned. A copy of such statement shall be submitted to the local school board and such board shall be afforded an opportunity to respond, in writing, to such appeal. After reviewing such written appeal and response, the superintendent may, for good cause, overturn the determination of the local school board. The superintendent shall transmit the determination of such appeal in the form of a written opinion to such board and to such supervisor identifying the reasons for overturning such determination of the local school board. The superintendent shall transmit the determination of such appeal in the form of a written opinion to such board and to such supervisor identifying the reasons for overturning such determination.

"(B) The superintendent for education of an agency office of the Bureau may appeal to the Director of the Office any determination by the school board for the school that an individual be employed, or not be employed, as the supervisor of a school by filing a written statement describing the determination and the reasons the supervisor believes such determination should be overturned. A copy of such statement shall be submitted to the local school board and such board shall be afforded an opportunity to respond, in writing, to such appeal. After reviewing such written appeal and response, the Director may, for food cause, overturn the determination of the local school board. The Director shall transmit the determination of such appeal in the form of a written opinion to such board and to such superintendent identifying the reasons for overturning such determination.

"(3) The superintendent for education of any agency office of the Bureau may appeal to the Director of the Office any determination by the agency school board for the school that an individual be employed, or not be employed, in an education position in such agency office by filing a written statement describing the determination and the reasons the supervisor believes such determination should be overturned. A copy of such statement shall be submitted to the agency school board and such board shall be afforded an opportunity to respond, in writing, to such appeal. After reviewing such written appeal and response, the Director may, for good cause, overturn the determination of the agency school board. The Director shall transmit the determination of such appeal in the form of a written opinion to such board and to such superintendent identifying the reasons for overturning such determination."

Mr. KILDEE. Thank you very much, Mr. Fritz, for your testimony. I have been reading in the last couple of days in the national newspapers of the Cherokees, those from Oklahoma and those who hid out and were not forced to take that Trail of Tears to Oklahoma. It is appropriate I think maybe that we begin these hearings today at a time when these two segments of the Cherokee nations are meeting to try to reunite that terrible division that took place in the last century.

I think it is such things as the Trail of Tears, that gives us some drive and incentive to address ourselves in a very meaningful way to our obligations to the Indians of this country, and I particularly appreciate your testimony.

One area addressed in H.R. 5190 is the issue of attendance boundaries which we heard a great deal of while out in the West. I know that the Bureau is already working on attendance boundaries with some indication that they will be in place in this upcoming year.

Could you tell the committee what steps have been taken to establish BIA attendance boundaries, and what is the time line for their implementation?

Mr. FRITZ. The attendance boundaries as currently envisioned by the Office of Indian Education programs are essentially in place throughout the country with the exception of Navajo area and the off-reservation boarding schools. We anticipate that those boundaries will be established by no later than the end of May. We are working closely, Mr. Chairman, in conjunction with the local representatives and the school boards in each of those instances.

Mr. KILDEE. I would encourage you to continue to do that, because that is something that really requires a great deal not only of input from the local Indian people, nations and tribes, but also a great deal of cooperation——

Mr. FRITZ. Yes, sir.

Mr. KILDEE [continuing]. To make such things work, once they are put into place.

Mr. FRITZ. Yes, sir.

Mr. KILDEE. One of the major proposals in the bill is to establish forward funding for bureau-funded educational programs. This funding mechanism is regularly applied to most other Federal education programs, because of school districts in Michigan, New York, and Maine have proven to the Congress that forward funding will facilitate program planning and administration.

Without forward funding, you can be very well far into the school year before you have any idea how much money you will be receiving. So we provide forward funding in almost every other Federal education program. The one area where we do not is in this area.

From both an administrative and an educational point of view, what is your opinion of forward funding?

Mr. FRITZ. Well, Mr. Chairman, I realize our substitute bill was delivered so late you and your staff haven't had adequate time to examine it, but by and large what we have done is substantially put in language which is generally identical to your proposed language of your bill. We wholeheartedly agree with the concept. We think that it is a sensible and positive step toward allowing Indian education administrators to go forward and do their planning, the necessary budgeting, and give themselves fixed figures from which to work. But frankly, the complexity for gearing up for this is not something we can do overnight.

I think we have to work in conjunction with your staff and yourself to make sure that such a transition and implementation of these provisions is done, first of all, in a sensible fashion and, second, so that we all know what the outgrowth of our language in the statute might be.

What I am offering there, I think because of the complexity of forward funding, is a way of making sure that the words are all in the proper sequence, that the "i's" are all dotted and the "t's" are all crossed. We wholeheartedly support the concept.

Mr. KILDEE. We will work with you on that. I would rather have some confusion resulting from forward funding than the confusion that results from a lack of forward funding at the present time.

Mr. FRITZ. I think the administration wholeheartedly supports that concept, frankly. Thank you, sir.

Mr. KILDEE. Thank you.

During the past year the Department of the Interior has made plans to move the responsibility for BIA facilities back to the Bureau. On this matter of facilities I have a couple of questions. What has been the administrative problems associated with having BIA facilities controlled by a non-BIA Interior Department group?

Mr. FRITZ. In the past I think one of the problems we have had was that of determining who had the authority or who had the power to implement various changes or various suggestions. When someone is not directly in the line of communication, when someone is not directly taking orders from the Assistant Secretary for Indian Affairs, there could be room for confusion.

There is obviously the traditional room for inertia that comes with a large organization like ours that we face. Frankly, funding facilities, whether for new construction, improvement and repair, or just operation and maintenance, is such a complex and convoluted area that a lot of time and energy has to be given to it.

I think what we have done this year—and representatives from COM have been reasonably cooperative—and the people from the Bureau have been reasonably cooperative, is to put together working groups which attempt to alleviate the problems that we have experienced in the past. I know of your great personal concern as a result of your trip to New Mexico as well as to other sites throughout the country concerning the upkeep of our schools, and I think that is one of the things we are attempting to address now.

We have Dr. Ross and several of the Assistant Directors as well as the Deputy Director of Education actively involved in the facilities program. We have experienced problems in the past, there is no doubt about it. There have been some false starts. There have been some missteps and that sort of thing, but I think we are slowly trying to incorporate the senior management of the Office of Indian Education Programs into that process, so that we can, to the extent possible, solve the problem in the very near future.

Mr. KILDEE. What bothers me a bit is that I think we have to make a distinction between a warehouse, and an educational facility. You just don't warehouse pupils. I don't mean to exaggerate, because while in Indian country I saw some very fine facilities.

Mr. FRITZ. Yes, sir.

Mr. KILDEE. But I also found some facilities that I know a Federal judge in my area of the country would not allow us to keep prisoners in, and yet we are educating Indian students in them. That is a crime really. That is terrible. The left hand has to know what the right hand is doing on this. Facilities is an extremely important area. We have an obligation to make sure that these facilities are up to standard for educational facilities.

Mr. FRITZ. Yes, sir.

Mr. KILDEE. I am going to push this until the last school that is not up to standard is up to standard. I will never rest on that. I saw some very nice facilities out there. I saw some I know that I would not let my children go to school in.

Mr. FRITZ. Yes, sir.

Mr. KILDEE. I know the people of Fairfax County would recall the board of education if they had those facilities there.

Mr. FRITZ. Yes, sir. That is one of the things I think that we hope to address in a May meeting with the various elements who are responsible for the management of the various facility programs, together with Dr. Ross and his senior staff, and we will be addressing these. This is a front-burner issue for us in terms of both new construction as well as facilities improvement and repair. We share the same concerns that you have.

Mr. KILDEE. Very good. I can't think of a higher priority than that.

Mr. FRITZ. Yes, sir.

Mr. KILDEE. First of all, we are dealing with children. There are only about three groups of people in this country, who are required by either the Federal Government, the State government, the tribal government, or the Indian nation government; to be at a certain place at a certain time. Those are people in the military, people in prison, and students.

Mr. FRITZ. Yes, sir.

Mr. KILDEE. They are required to be there. They don't really have any choice. They are told you must go to school, and if this is the only school building available, you go to that school building. The one group has enlisted. The other group has been convicted.

Mr. FRITZ. Yes, sir.

Mr. KILDEE. So the students stand out in a very, very special category.

Mr. FRITZ. Yes, sir.

Mr. KILDEE. There are compulsory attendance requirements there, either Federal, State, or tribal attendance requirements. We have a moral obligation to address ourselves to all aspects of education, but certainly the health and safety of those students in those buildings.

You and I have talked privately on this.

Mr. FRITZ. Yes, sir.

Mr. KILDEE. And you share this concern with me. I am not addressing this at any individual. I am addressing it at the U.S. Government, where the trust responsibility resides. You and I, because we are in a position of responsibility, have to really make sure we carry to our obligations attendant to that responsibility.

Mr. FRITZ. Yes, sir.

Mr. KILDEE. Before completing my questions, I would like to defer to Congressman Gunderson from Wisconsin. Congressman.

Mr. GUNDERSON. Thank you, Mr. Chairman. I must admit that I was operating under the assumption we were having a hearing on H.R. 11 today. I am a little bit unprepared in terms of what exactly is going on here. As I understand it, H.R. 5190 sets up a new structure within the BIA for the Office of Education. It gives them the authority to control their personnel, their budget, their procurement systems, et cetera. Is that the way you read the bill?

Mr. FRITZ. Yes, Mr. Congressman, it is, in terms of some of the proposed provisions of H.R. 5190, as currently on the table. The bill, as introduced on the 20th of March, would provide for a separate administrative function, as I read it, within the Bureau of Indian Affair's Office of Indian Education Programs.

Mr. GUNDERSON. What would be the personnel and budget impact? Have you had any time to make any cost analysis of that?

Mr. FRITZ. No, not specifically. Because of the speed of the process, and because of the complexity of the bill, we haven't really put dollars and figures together. We could, I would presume, in a reasonably short while.

Mr. GUNDERSON. I think if you could provide us your analysis of what it means in terms of the whole budgetary and personnel perspective, it would be helpful to this committee.

Mr. FRITZ. Yes, sir.

Mr. GUNDERSON. Another area on the bill eliminates some requirements for competitive bidding. Is that correct?

Mr. FRITZ. Yes. There is one provision within the bill which would have an implication with respect to competitive bidding.

Mr. GUNDERSON. What is your reaction to that? I must say that if I were to go home to my constituents and say that we are eliminating competitive bidding with the problems in DOD right now, although this is not similar, I am not sure they would respond all that favorably. Does the Department have a position on this issue?

Mr. FRITZ. Yes, sir. In our proposed substitute bill, we have deleted that section, and for several good reasons: One, that procurement without competitive bidding is not prudent business practice. It is certainly against the Government policy, as we understand it, and there is a specific statute, which we haven't had time to examine it against, but the Federal Property and Administrative Services Act of 1949, as amended, would conflict with this type of language, we believe, on first blush. But we haven't received a formal legal opinion, sir.

Mr. GUNDERSON. Have you sought one from your own counsel within the Department?

Mr. KILDEE. That is on the agenda to find one. We can get one. We haven't received it yet, sir.

Mr. GUNDERSON. Again, I think as long as you are going to supply us with some information, if you could expand it a bit in that area with what your legal counsel suggests, it would be helpful.

Mr. FRITZ. Yes, sir.

Mr. GUNDERSON. You also mentioned in your testimony an effort to develop a central automated data processing system bureauwide. Could you comment on these efforts to date, and how this Office of Education fits into this plan?

Mr. FRITZ. At this juncture, what we have attempted to do throughout the Office of the Assistant Secretary within the Bureau of Indian Affairs is to establish, in consultation with the Department, with the authorizing committees of Congress, a new Office of Data Systems, and this office is to establish both the policies and procedures for automatic data processing and management of information services within the Bureau of Indian Affairs.

Frankly, the management of ADP was pretty much in shambles for the past several years, and we have taken positive steps to turn this around. Currently, we have Dr. Leo Nolan, from the Office of Indian Education Programs, working in conjunction with this management effort. It is a slow and tedious process. It is something that is not going to be done overnight.

We are currently involved in the budgetary process with the two appropriation subcommittees involved with Interior, but I think that we see light at the end of the tunnel—if you will pardon my expression.

One of the things we have done in our substitute bill, frankly, is to delete the provision to set up, or isolate, the MIS provisions for the education organization, just because we think we are getting on top of the problem. We think that the education organization can utilize these services from the Bureau's MIS network.

Mr. GUNDERSON. You talk about the substitute bill. Where is it?

Mr. FRITZ. There is one here. I apologize.

Mr. GUNDERSON. Has it been introduced yet?

Mr. FRITZ. It came up this morning. I apologize. I have got one for you if you would like to see it.

Mr. GUNDERSON. Let's go back and sort out the apples and oranges. H.R. 11, Mr. Perkins' bill, calls for a straightforward reauthorization of Indian education programs. Those are within the Department of Education, but do you as the spokesman for Interior, have any response to that approach?

Mr. FRITZ. We really haven't focused specifically on the provisions of H.R. 11. We have pretty much focused upon the narrower bill, H.R. 5190, sir.

Mr. GUNDERSON. Why don't you comment on the cooperation between Interior and the Department of Education in this whole area, if you could, for just a minute. What steps have been taken between your two agencies to ccordinate and work together in this whole area of Indian education?

Mr. FRITZ. I would like to have Dr. Kenneth Ross, Acting Director of Office of Indian Education Programs, respond, sir.

Mr. GUNDERSON. Sure.

Mr. ROSS. Mr. Chairman, with respect to our coordinative efforts with the U.S. Office of Education, there are a number of programs in which we get involved on an advisory basis or in tandem, or through a cooperative agreement with our interdepartmental agreement to provide services. With respect to the chapter 1 program, we act as a 51st State in implementing chapter 1 services. Under the exceptional education program, we operate as a 51st State, and so we, in essence, submit a State plan to the Office of Education for those two particular programs.

With respect to bilingual education, then we interface our staff with their staff in terms of proposals or applications for projects to be funded under the U.S. Office of Education. In relation to the 1-percent vocational setaside, we also act as an advisory body to review those applications, and they directly administer those programs.

We have been meeting with them with respect to the impact aid legislation, Public Law 81-815 and 81-874, in terms of the effect that impact aid money place in relation to the programs that the Bureau of Indian Affairs funds.

Mr. GUNDERSON. Thank you. Thank you, Mr. Chairman.

Mr. KILDEE. Thank you, Mr. Gunderson.

In conjunction with one of the questions you asked, one of the alternatives that we are preparing ourselves for the bill, as introduced, would be, to try to split certain factions somewhat between

education and the administrative division. For example, we would say procurement at $25,000 or less could be in the education area. Amounts beyond that would be retained in the administrative level. That would be one possible approach.

I have already had language drafted to achieve that, so I appreciate your question, Mr. Gunderson. There have been some other questions among the Indian nations, people and tribes on that also.

One other question. If—and I will put that "if" there very strongly—I would hope to implement that "if"—if it is clearly understood that the provision of H.R. 5190 does not require a separate hardware system, do you have any problem with the clarification in the bill making Education responsible for the development and implementation of the management information system?

Mr. FRITZ. I guess we would have to look at that in a detailed way. I don't mean to hide from you and not give you a direct answer, but frankly it is one where we would have to bring the education management information experts and the Office of Data Systems experts together with the staff people up here and our own management folks, and I think we could hammer out some sort of working relationship which would be beneficial.

Mr. KILDEE. You wouldn't reject it out of hand; you would be willing to work with us on it?

Mr. FRITZ. I have learned that to reject any idea out of hand is to put blinders on, and it is to give myself the ultimate ignorance of not accepting new ideas. So I think the answer is obviously we are willing to work with the committee and with the people in Education as well as the management people in Interior and the Bureau of Indian Affairs to solve the problem.

Mr. KILDEE. Thank you very much.

Do either one of you have any closing comments before we go on?

Mr. ROSS. I would like to offer one observation, since this bill is a starting point to generate discussion. In looking at your concern with respect to facilities, one of the areas that I am well aware of, since I have been working on trying to get the minimum academic standards and dormitory criteria published, I see that standards of education have been omitted from those particular regulations. The dormitory standards or criteria are being proposed, but the academic facility standards have not been addressed.

In the second area, if we are looking at improving the quality of educational performance by a system, one of the elements that needs be imbued in tandem with accreditation is the issue of professional certification of educators, and on that issue I think we would like to sit down and discuss how we should proceed to do that, given employee rights and OPM regulations.

Mr. FRITZ. I would like to conclude by saying a few words, Mr. Chairman, and then we will get out of your hair and on with the other business. One of the things that I found when I came to Washington is that the Office of Indian Education Programs within the Bureau had good minds. It had good leaders. It had interested people, good organizers. But it seemed to me that the Office of Indian Education Programs really needed to take hold of itself and start offering itself up in terms of technical expertise, not as a passive instrument but as an active one, helping the Bureau and the

Department to respond to changes in Indian country regarding both its people, the society, and the culture.

In the past, too often I think the Office of Indian Education Programs has just stood there and said, "Here we are. Why us?" I think under Dr. Ross' leadership, and under the leadership of some of our more permanent people in the past several years, we are finding that the Office is finally starting to seek out and propose new modes, new methods for furthering the Bureau's mission particularly in this critical realm of Indian education, and I want to continue that.

I want to continue the dialog with this committee and with other committees up here on the Hill, because we can't fear novelty, nor can we simply rely upon traditional methodology. Indians and Indian country aren't static bodies, and only by working together can we solve, through the confrontation of the various problems that we run into, the many, many issues that we all know are there, and I don't think that we can run away from those problems.

Some of the problems we can solve by administrative or congressional fiat, but for others it's just going to take rolling up our sleeves and solving the problem the hard way.

Thank you very much for your time.

Mr. KILDEE. Thank you, Mr. Fritz. Thank you, Mr. Ross.

Our next panel will consist of Ms. Georgianna Tiger, education director of the National Congress of American Indians; Dr. Franklin Freeland, assistant director of the Navajo Division of Education, Navajo Nation, Window Rock, Ariz.; Dr. Elmer Savilla, executive director, the National Tribal Chairmen's Association; and Mr. Delfin Lovato, chairman of the All Indian Pueblo Council, Albuquerque, N. Mex.

I note that one of my first educators in Indian education was Mr. Delfin Lovato, when I came out West in 1979. I welcome all of you here today. Proceed in the manner I introduced you or any manner you worked out among yourselves. Again, if you can summarize your statement for the subcommittee, we will make sure your entire statement is put in the record.

STATEMENT OF GEORGIANNA TIGER, EDUCATION DIRECTOR, NATIONAL CONGRESS OF AMERICAN INDIANS

Ms. TIGER. Ladies first. I am Georgianna Tiger. I am with the National Congress of American Indians. I thank you for this opportunity to testify on the amendments to title XI of Public Law 95-561.

Overall, we commend the committee for its insights and responsiveness to the needs that are expressed in this bill, unforeseen 6 years ago at the time of the original enactment. We point out that the shortness of time since introduction has not enabled adequate time for full review by all member tribes concerned.

It was our understanding that this bill was to be marked up on Wednesday. However, I understand from your comments, Mr. Chairman, that this is just a starting point, and I hope that we will have time to respond to two particular proposals that I will address in this testimony.

NCAI does not find any major section of this bill inconsistent with its education posture. We support H.R. 5190 as far as it goes.

As a priority, NCAI endorses the critical need for forward funding as proposed by the bill, section (2)(A) 1129.

BIA Education seems unique within Federal education programs in that it is not forward funded.

This situation has placed an undue burden on education financial planning. We urge the need for passage of this provision.

Most of the provisions appear to be a strengthening and clarification of existing statute for the benefit of Bureau educational service delivery.

Another important point to be made in needing more time for tribal input on this legislation is raised by the clarification proposed in OIEP line authority to the Assistant Secretary.

Some affected by the legislation now endorse the need for elevation of the position of Director of the Office of Indian Education to that of Deputy Assistant Secretary, citing that 80 percent of BIA facilities and 70 percent of personnel are education.

At present the current department's managerial structure of the office reporting through chain of command is not outside of usual administrative practice, albeit apparently outside the direction of the existing title XI, Public Law 95-561 statute.

Elevation of the Office of Indian Education Programs may be desirable. However, NCAI member tribes' education programs thus affected have not had an opportunity to deliberate that possibility.

One of the concerns that raises is taking it outside of the protection of the civil service that it now has, and we feel that tribes need to really review both aspects of that possibility, so at this point we don't endorse either, but we do want it to remain open as a consideration.

Final responsibility for implementing these legislative amendments falls to the Bureau's current personnel system. We urge this committee to consider specific legislative guidance to the BIA/OIEP personnel system that it charges with carrying out these mandates. Shortcomings of this system were evidenced in the "U.S. House of Representatives Investigative Report of 1983 on Schools Operated Under Contract to the Bureau of Indian Affairs," wherein deficiencies on the part of the Bureau resulted in negative findings for contract schools.

If the Bureau is to have oversight and technical assistance authorities, the services it offers cannot be inferior to those it serves. NCAI endorses the centralization of all support services to education including facilities operation and maintenance for the schools under the Office of Indian Education Programs.

We are fully aware of the concerns raised by the proposed consolidation of support services under education that may make BIA/OIEP easily transferable as a compartment to the U.S. Department of Education.

NCAI feels that tribes nationally have made their unanimous and adamant opposition to such a proposal known. The U.S. Congress has also made its intent known through its clear exclusion of BIA education programs in the legislation that created the department 6 years ago. If this threat hangs over the heads of Indian tribes even until now, then fractionated and inadequate support

services to the Bureau's Office of Indian Education will continue. NCAI endorses the implementation of a system within OIEP that will enable these support services to be under its control.

We are concerned with the proposed transfer of management information system responsibilities to the Office of Indian Education. The original 1978 mandate that called for an integrated MIS system in six areas is relatively straightforward.

Sufficient time and money has transpired over the nearly 6 years since that enactment to reasonably expect such system to be operational. We are skeptical that a transfer of responsibility from the resources of the entire department to the more limited resources of OIEP will not guarantee an operational MIS system without further direction from the Congress than what is proposed in H.R. 5190.

NCAI supports the contract schools in specific provisions that will improve their programs. This includes the need to establish stable attendance boundaries and standards consistent with tribally determined student needs.

However, we are concerned that the Secretary retains bottom line authority to reject tribal decisions, with no criteria upon which to base a rejection. We feel that accreditation candidacy is a sufficient requirement upon which to give full autonomy to tribes. We endorse the provision that no administrative or indirect cost can be funded at the reduction of education program operation.

We endorse the need for categorization of schools having special cost factors met in order to operate adequately. Under section 1128 allotment formula, there are possibly other special costs to be considered in standards development and on achieving accreditation candidacy, such as teachers' certification costs and the examples identified on the bill should not be considered exclusive.

NCAI endorses the need for equal treatment of all contract and Bureau schools but feel that this provision may need strengthening in that it does not address the needs of those instances where school board training has been inadequate on the part of the Bureau.

NCAI endorses the need to preserve historical service patterns in Bureau-run schools but believes this part also may need strengthening in instances where schools are deteriorating under Bureau operation. We believe school circumstances may change where it would not be desirable for a child to remain at the same school under this section.

NCAI is concerned that too much discretion still exists with the department for closure of Bureau schools with a simultaneous transfer of students to public schools which has been determined as undesirable by Indian tribes in many instances.

We believe the requirement to notify and keep tribes, school boards, and parents informed needs strengthening as it vests final authority to close the school with the Department. We point out the term "under consideration by the Bureau" is another term that could be construed like consultation, or could be subject to so many different interpretations, and we believe that needs strengthening.

The proposed study of the child's educational needs and, where applicable, social needs, leaves final authority again with the De-

partment. These sections need a strengthening of final tribal authorities.

Under section 1130 audit, NCAI endorses the development of an advance system with which the Inspector General can measure financial compliance against tribally developed local financial plans. We believe the success of this section relies on forward funding of education programs.

Under section 1138, NCAI endorses the need for citations of statutory authorities within regulations as this will certainly benefit tribes and their programs as a further clarifying tool.

It is our understanding that sufficient instances of question exist at the tribal level that necessitate a clarification of voluntary services.

In conclusion, it is our intent to be sensitive to and respect the separation of responsibilities between the legislative and executive branches of the Federal Government. However, we see no usurpation of the administration's responsibility to carry out the statute by asking the Congress to provide detailed legislative language that will better enable the Department to effectively and expeditiously carry out the law. We urge reasonable time-frames be delineated under each section of the law.

We lament the fact that the only resource currently available to the tribes in forcing Bureau implementation of existing statute is through the courts at even further cost to them of time and money as evidenced by the NASBA suit filed last month.

While the Bureau belabors implementation of title XI, many Indian children have gone through 5 more years of school and have yet to realize the full intent of the Congress back in 1978.

In closing, I wish to point out one more section, Mr. Chairman, that was recently brought to our attention and I hope that NCAI tribes will be given an opportunity to deliberate this. That is where it has been proposed that where implementation of the law is not adhered to, that each Federal official responsible for the failure to implement said measure personally shall be jointly and severally liable for the payment of plaintiff's attorney's fees and costs.

This is another area we wish to explore, because we understand that possibly under the rules of civil procedure, that vehicle is already there. However, we feel the answer has not yet been provided to implement the statute.

Thank you for your time.

Mr. KILDEE. Thank you, Ms. Tiger. We appreciate your cooperation and very positive suggestions you have made both here this morning and with the staff. Some of those will be incorporated in a substitute which we will be drafting, and also we will continue to work with you on the civil service status to appreciate your continued input on that.

Dr. Freeland.

STATEMENT OF FRANKLIN FREELAND, ASSISTANT DIRECTOR, NAVAJO DIVISION OF EDUCATION, NAVAJO NATION, WINDOW ROCK, ARIZ., ACCOMPANIED BY PABLITA T. ABEYTA, STAFF ASSISTANT

Mr. FREELAND. Good morning, Congressman Kildee and Congressman Gunderson. My name is Franklin Freeland. I am the assistant director of the Navajo Division of Education. With me this morning is Pablita Abeyta, staff assistant here in our Washington office.

Our executive director, Mary Helen Cramer, extends her warm greetings to you, Representative Kildee. She could not make it today due to commitments back home.

The document that we do have before the committee gives an oversight of comments made by people out in the field such as bureau people, contract school people. We have met with them this past week. We have received comments regarding the bill that is being proposed, and your comment earlier this morning, Representative Kildee, is appreciated, in that you stated as long as you are a Congressman, you will work to assure that the Government upholds its obligation in fulfilling treaty obligations. We appreciate that.

Back to the document that we are submitting. I will not go into it in great detail. It is in black and white, and the committee can review its content. The very first portion of it does cover, as I said, an oversight concern covering nine major areas of the bill. We do have an appendix attached that does address in detail recommended modifications, changes, deletions, additions as well as asking for clarifications in certain sections that we were able to arrive at.

There is one comment that I feel that I should make at this point, too, and that is the chairman of our Navajo Tribe, Peterson Zah, has placed education as a priority within our Navajo Nation. Because of that, we are here representing the concerned constituents of the Navajo Nation, that being those children between grades K through 12. Our Navajo population median is 17 years, so half of our population is roughly around school age.

We are a young population and the chairman does see the investment in young people as a means of carrying on the governmental system of the tribe as well as meeting the technological world that is before us.

One concern that I do want to bring to the committee is a section here that I would like to read from our document.

First of all, we would recommend that the Director of the Office of Indian Education Programs be elevated to the status of Deputy Assistant Secretary, to assure the intent of Congress that he answers directly to the Assistant Secretary and to clarify his position within the Interior Department's hierarchy.

In addition, we would recommend that Congress assures that if Indian tribes, tribal organizations and educators are now to deal with only one entity within the Department of the Interior with regard to education or related functions, that the entity so designated possess all necessary related functions and authority.

What we want to avoid is finding some functions falling between the cracks with the Office of Indian Education Programs lacking

authority and the rest of the BIA refusing to act because of OIEP's exclusive jurisdiction over education.

We also recommend that the education contract be centered at the area level, while functions such as technical assistance and support services remain centered at the agency level.

If such a division is unacceptable to other tribes, we would request that such a division of functions be specified for the Navajo Nation. Your visit out to the Navajo Nation, I am sure, Representative Kildee, was an orientation showing that there are five agencies within the Navajo Nation. We do, again, appreciate the involvement that has been extended to us. We encourage this in behalf of our constituents, the Navajo people. Thank you, sir.

[Prepared statement of Franklin Freeland follows:]

PREPARED STATEMENT OF FRANKLIN FREELAND, ASSISTANT DIRECTOR, NAVAJO DIVISION OF EDUCATION, NAVAJO NATION, WINDOW ROCK, ARIZ.

On behalf of Chairman Peterson Zah and the Navajo Nation, we are submitting for the record our comments to H.R. 5190, the Indian Education Amendments of 1984.

In perparing these comments, the Navajo Division of Education has endeavored to supplement its own analysis, and that of other professionals within the Navajo Nation government with the concerns, opinions and analyses of other educational professionals within the BIA operated and contract school systems within the Navajo Nation. Our concern in analyzing the proposed legislation has been to assure that the changes made in the existing Indian education laws enhance Indian control of Indian education, both at the tribal government and local school board level, and that the changes lead to a more efficient system of effective schools serving the unique education needs of our Navajo children.

In presenting our comments, we will present first an overview of some major areas of concern which we have identified within the existing law and the proposed legislation. We will then provide a more detailed section-by-section analysis of the proposed legislation. We hope that the subcommittee and full committee will find these remarks useful in their efforts to improve the legal framework supporting Indian education within the BIA operated and funded system.

I. KEY ISSUES INVOLVING STANDARD

It is our brief that the provisions of the Indian Education Amendments regarding standards for BIA funded or operated schools should be drafted to give the greatest possible encouragement to the development of tribal educational standards and to protect Indians tribes and local school boards from culturally inappropriate standards. With this fundamental goal in mind, we would recommend some changes in the provisions of the existing law and of Section 2 of H.R. 5190.

1. Tribal and local board waiver and substitution of standards

The existing law allows a tribe or designated local board to waive the BIA standards in whole or in part and replace them with nothing. The proposed law requires that when standards are waived, a placement be proposed. We can see the importance of assuring that a vacuum is not created in regard to standards, however, we feel that in some cases it is appropriate to allow a tribe a designated local board to waive a standard without replacing it. This is particularly true in the case of a standard which is at odds with the culture and values of the particular community involved. Therefore, we recommend that tribes and local boards be allowed to waive standards without replacing them subject to the same review by the Secretary which applies to tribal substitute standards.

With regard to tribally adopted and local board standards which are developed as an alternative to the BIA standards, we believe that the law should be written to encourage the application of such standards to BIA schools. We believe that there should be presumption favoring the appropriateness of such standards. We further recommend that in cases where tribally adopted or local board adopted standards are rejected by the Secretary under a claim that there is "good cause" for the rejection, the Secretary's decision not be final and unreviewable. Rather, it should be subject to explicit appeals procedures or to the appeals procedures contained in 25 CFR Part 2 for appeals to the Board of Indian Appeals. The question of the exist-

ence of "good cause" for rejection needs to be reviewable to protect against the arbitrary exercise of authority by the Secretary. Further, the presumption in favor of the appropriateness of tribal standards should require the Secretary to establish that he has "good cause." In the absence of such safeguards, the law requires the Secretary to be the judge of his own reasonableness. We fear that the law as written now and as proposed for amendment in H.R. 5190 may take away with one hand what it grants with the other.

We are also concerned that in related provisions of the Education Amendments, tribal standards be accorded equal status with BIA standards when those standards are adopted pursuant to the Act. This may require some technical review of the Act and amendments to make certain that whenever the Act makes a school subject to standards developed under existing Section 1121(b) or (c), it also includes Section 1121(d).

2. Relationship of BIA standards and State standards.

With regard to the relationship of BIA standards and state standards, it is our feeling, shared by many educators within the Navajo Nation, that state standards should be an alternative to BIA standards rather than a floor under them. The reason for this is that the standards may not be comparable. It may not be possible to determine which standard is "higher" if the BIA and the state take different approaches to standards is "higher" if the BIA and the state take different approaches to standards development. For example, the currently proposed BIA standards have been reviewed against the New Mexico standards and many of our educators have concluded that they are not comparable. They take very different approaches to many standard issues. We cannot say which is the "higher" standard. Schools within the BIA system fear that if they have to comply with both they will be under a conflicting system which will add to administrative confusion without improving educational quality.

3. Standards for contract schools

A related concern regards the requirements of standards for contract schools. We recognize the deeply-felt desire of Congress to hold contract schools to an accountable standard. We agree that this is an appropriate Congressional goal. However, we do urge Congress to allow for such flexibility in the development of standards appropriate to contract schools as will allow and encourage innovation in educational approach. It is our experience that some of our most innovative and successful contract schools would find their programs at odds with the standards proposed by the BIA or required by the surrounding states.

We feel that the Act should establish more than one approach through which contract schools may meet the standards requirement. One of these would be adherence to BIA standards. Others would be adherence to state standards, adherence to lawfully adopted tribal standards or adherence to the standards of a recognized accrediting organization. In addition, we feel that where, pursuant to Section 1121(e) a contract school has developed an alternative or modified standard which has been subject to appropriate BIA review through the contracting process, this alternative or modified standard must already be approved by the BIA before it is applicable. Therefore, the concern of Congress with accountability can be met, while valuable innovation can be encouraged.

We also recommend that the period for standards compliance for contract schools be extended to five years from the enactment of the amendments or three years from entering into an initial contract, whichever is longer. This will give contract schools sufficient lead time for standards development or for modifications of staff and program. It will also give to new contract schools their initial contract period to come into complete compliance with the applicable standards. We feel that such time limits will be less disruptive of program than shorter time limits.

4. Effect of failure to seek sufficient funds

We agree with the provision stating that failure to meet standards shall not be a basis for the Secretary's taking personnel action against an individual if the Secretary has failed to seek the needed funds. We would also recommmend that failure to meet standards should not be a basis for failure of the BIA to renew a contract with a contract school if the Secretary has failed to seek the needed funds. In this light, we believe that provision should be made in the law for situations in which the Secretary seeks funds but Congress fails to appropriate them. We would recommend that in any case where funds needed to meet standards are not sufficiently appropriated, the Indian tribal government or a designated local school board should have the authority to prioritize standards compliance. We do not believe such authority should reside in the BIA.

5. Immunization

The educators with whom we have spoken are agreed upon the importance of an immunization program. However, they have raised a concern that a school immunization standard may cause the Indian Health Service to deem immunizations an education responsibility rather than an IHS responsibility. This could be a serious financial burden to schools. School representatives have recommended that the standard cover immunizations and vision and hearing screening. They also recommend, however, that the Act contain specific language requiring IHS to maintain its current level of service to Indian children in regard to immunizations and vision and hearing screening and specify that the Act shall not be interpreted in any way to reduce IHS's responsibilities.

II. SCHOOL CLOSURES AND CONSOLIDATIONS

We are pleased to see specific provisions in the proposed Act regarding procedures for school closures and consolidations. This has been an area of great concern to the Navajo Nation and to the local school boards and communities within the Nation. We believe that specific safeguards are required to assure tribal and community involvement and to avoid disruptive changes in school organization. Based upon our experience of "consolidation" with the Bureau of Indian Affairs on matters such as this, however, we believe that stronger provisions that those contained in the Act are required.

It is our experience that words like "notice," "inform," "consult," and the like are often given a minimalist interpretation in practice. They do not assure Indian tribes and local communities a meaningful involvement in the process regarding which they are to receive notice, be kept informed and be consulted. Therefore, we believe that the provisions of H.R. 5190 regarding "notice" to Tribes and local boards and regarding keeping them "informed" should be altered to require that affected Indian tribes and local boards be fully involved in the process of consideration and review of possible closures and consolidations from its inception and that any such consideration and review be undertaken in coordination with affected Indian tribes and local boards.

We are also concerned that there be some assurance that the procedures established regarding closures and consolidations shall not affect rights of contract schools regarding contract approval and declination, retrocession, resumption, termination and reauthorization, but that the safeguards afforded contract schools be no less than those afforded BIA-operated schools under Part 3 of the Act.

Finally, we are concerned that a deadline for regualtions implementing Part 3 be established.

III. KEY ISSUES INVOLVING ESTABLISHMENT OF SCHOOL ATTENDANCE BOUNDARIES

We recognize that the establishment of attendance boundaries for day attendance at BIA schools is an important congressional concern. In the absence of some regulation, concern has arisen about "headhunting" as schools within some large geographical areas seek to increase their enrollment at the expense of each other. We recognize the need for attendance boundaries. However, we do caution Congress to recognize the multiplicity of factors, cultural and social as well as geographical, which contribute to choices of Indian families as to where they will send their children.

1. Tribal and local board involvement in boundary setting

We applaud the provision of the Act which would give to Indian tribes an initial opportunity to establish satisfactory boundaries. We believe that this provision recognizes the importance of this issue to Indian tribes and the desirability of tribal initiative in this area. We would urge that boundaries established by tribes and local boards be given every reasonable legal presumption and protection.

We are concerned about the effect of the Act in situations in which a tribe or designated local board has not acted, or has seen its proposed boundaries successfully rejected by the Secretary. In such a case, the Act provides for the Secretary to establish the boundaries according to a variety of criteria. We feel that in such a case, the Secretary should be required to coordinate with affected Tribes and local boards in the determination of attendance areas. The fact that a Tribe has not established its own boundaries or has had those boundaries rejected should not eliminate the requirement of consultation and coordination.

2. Establishment of day attendance boundaries within the BIA-funded system

We have received considerable input from our contract schools regarding day attendance boundaries. Comments from contract schools have urged that when day attendance boundaries are established, they be established for the entire BIA funded system, both BIA operated and contract and that day attendance boundaries between the two kinds of schools be mutually exclusive. We concur with this recommendation. Contract schools have expressed a concern that their attendance areas enjoy the same protection from "headhunting" as BIA-operated schools.

We are also concerned about the preference for students continuing their education "in a single school" contained in Part 3, subsection (c)(3). This provision could justify using the establishment of boundaries as a way to favor K-12 schools over K-8 schools and K-8 schools over K-6 or K-3 schools. We do not believe that boundary-setting is an appropriate process for making such determinations. Rather, we would suggest that the establishment of boundaries permit a student to continue his education, to the greatest extent possible, at schools closest to home.

3. Non-exclusive attendance areas within the BIA system

We believe that it is important to maximize day attendance of Indian children within the BIA system. At the same time, we realize that numerous geographical, social, economic and personal factors go into decisions about student attendance at a particular school and about the decision whether or not to seek boarding facilities for a student. We feel that it is important that geographic isolation not be seen as the sole or primary factor in regard to attendance at boarding school or residence in a bordertown dormitory. We also recommend that provision be made for non-exclusive attendance areas for programs serving special need populations within the Bureau-funded system. They would apply not only to boarding programs but to special purpose day programs such as special education programs for hard to serve handicapped students, alternative schools, etc.

4. Relationship of the BIA-funded system and the public school system.

A major concern of Navajo parents and educators is the question of parental choice of schools between the BIA-funded system and the public school system. Time and again, Navajo parents have expressed a concern that they be allowed to decide which systems they wish to have educate their children. As citizens of the United States and of the State in which they reside, Indian children have a constitutional right to an education in the State public school system. This right cannot be denied them by act of Congress or administrative decision of the Secretary. Likewise, we believe that every Indian child has a trust right to an education through the BIA-funded system. Therefore, we strongly urge Congress to assure that no exclusive attendance areas are established between the BIA-funded school system and the public school systems serving Indian reservations.

It is our experience that the BIA-funded system and the public school system are not comparable in a number of particulars. For example, in the Navajo Nation the proportion of Navajo teachers teaching Navajo children is highest in our contract schools, relatively high in the BIA-operated schools and quite low in the public schools. We feel this difference is significant and an appropriate element affecting choice of schools.

Public Law 95-561 and H.R. 5190 make provision for an Indian tribe or local board to develop and implement its own standards in regard to BIA operated and funded schools, subject to review by the Secretary. Indian tribes such as the Navajo Nation may employ this right to establish appropriate curriculum in the area of bilingual education, instruction in tribal culture, history and civics. Tribes will not have comparable authority to require such standards of public schools.

We feel that the choice of education between the BIA-funded system and the public school system is made upon many grounds, including social, cultural, language, economic, historical, geographical and educational factors. We urge Congress to permit the BIA-funded system and the public school system to overlap.

We do urge Congress to take the intent of Part 3, subsection (e) and reformulate it to assure that in no case shall the Secretary regard a school attendance area as exclusive and to assure that unless the Secretary determines that a local school district is in fact able and willing to provide full and equal services to Indian students throughout the school year, he shall assure that the needed services are made available to all affected students in BIA funded or operated schools. We believe that in addition to establishing day attendance areas covering the entire reservation, the Secretary has an affirmative duty to identify unserved or underserved student populations (including those dropped out of school) and provide for their needs.

IV. KEY ISSUES INVOLVING BIA EDUCATION FUNCTIONS

The provisions of Section 4 of H.R. 5190 have generated a great deal of concern but less consensus than on other issues. Navajo educators and administrators agree that the present situation within the Bureau is cumbersome for educational programs, that lines of authority are often confused and confusing. There is a particular problem with the inability of educational administrators to control maintenance and repair activities and to effectively input facilities improvement and repair priorities. Thus no one we have consulted favors the existing system. Yet, experience has made many educators and administrators wary of major structural changes, when all the components of such a change are not clearly delineated.

Based upon all comments and discussions, we would recommend that the Director of the Office of Indian Education Programs be elevated to the status of Deputy Assistant Secretary, to assure the intent of Congress that he answer directly to the Assistant Secretary and to clarify his position within the Interior Department hierarchy. In addition, we would recommend that Congress assure that if Indian tribes, tribal organizations and educators are now to deal with only one entity within the Department of Interior in regard to education and related functions, that the entity so designated possess all necessary related functions and authority. What we want to avoid is finding some function falling between the cracks with OIEP lacking authority and the rest of the BIA refusing to act because of OIEP's exclusive jurisdiction over education.

We also recommend that education contracting be centered at the Area level while functions such as technical assistance and support services remain centered at the agency level. This would avoid conflict of interest situations in which an agency is asked to contract over to a tribal organization a school, program or function which agency personnel wish to retain under their own control. If such a division is unacceptable to other tribes, we would request that such a division of function be specified for the Navajo Nation. There are 5 agencies within the Navajo Nation and one Area. The Navajo Tribal government maintains an active oversight relationship to education contracts authorized by the tribal government. This oversight function can best be exercised in relation to the one Area office located in Window Rock, capital of the Navajo Nation, rather than in relation to 5 agency offices dispersed through the reservation.

We recommend that subsection (c)(2) of Part 4 be enlarged to specify that the agency education office shall provide all services, technical assistance and support functions for education programs in the areas of curriculum, procurement, budgeting, personnel, finance, housing, and property management.

We do commend the provision of the Act placing facilities management with OIEP. This is a change which has been very much needed within the Navajo area.

V. KEY ISSUES INVOLVING THE ALLOTMENT FORMULA

We have felt for some time that the allotment formula needs revision to take account of the real costs of operating small schools in isolated areas and to take account of the special costs associated with day attendance on the reservation. The current formula does not take into account some of the special services required of our day schools. For example, some students who live close enough to a day school to attend on a day basis most of the time, cannot travel between school and home when bad weather makes the unimproved clay dirt roads impassable. For these students, temporary boarding arrangements must be provided. Otherwise the student faces the choice of attending boarding school or missing a significant period of school. The ISEF school criteria do not provide for temporary boarding arrangements. Many day students need access to morning showers, clothing, supervised after school study areas and the like to accommodate the requirements of a contemporary education and the realities of their rural homes. These special services need to be taken account of in the formula.

Isolated schools also have special service costs. Some schools must fit a school nurse and medical transportation into the school budget because there is no medical service reasonably close to the school.

Based upon these considerations, we recommend specific language in Part 6 of HR 5190, in addition to the language already there including as specific factors in the formula temporary boarding arrangements in support of day attendance, costs for special services provided in support of day attendance, and cost for special services or programs required by the health and safety needs of the students.

An additional area of concern in the allotment formula is the cost of school board meetings and activities. Concern has been expressed by a number of schools that a formula may reward inactive boards and penalize active boards. Within the BIA

school system there is a wide range of board involvement in the running of the school. The Navajo Nation supports maximum local board control over Navajo education. Therefore we are concerned that any formula be adequate to pay the meeting expenses of those active boards which exercise genuine management authority over their schools.

Representatives of our contract schools have pointed out that their boards have greater legal authority over and responsibility for school operations than boards of BIA-operated schools. They express a concern that the formula may fail to reflect the time and expense in exercise of this greater authority. They have requested assurance in the law that they may continue to include such expenses in their computation of administrative and indirect costs to make up any difference between the funds provided by formula to all boards and those required for contract operation of the school by a local board.

VI. KEY CONCERNS INVOLVING UNIFORM DIRECT FUNDING

This part provides for forward funding of school operations. We are very pleased to see this provision. Forward funding has been a goal of the Navajo Tribe for BIA educational programs for some time now. We must confess, however, to being a little confused by the language of this part. We would recommend that it be clarified so that it will not be subject to misinterpretation in its implementation.

Local school personnel also recommend that the date of the first publishing of allotment be set at April rather than July 1. With forward funding, the allotment amounts should be known by this date. Publishing allotments at this time would allow schools to plan for the coming school year while personnel, students and parents are all available. It is acknowledged, however, that even July 1 is a great improvement over the current situation.

We have had some difficulty interpreting Section 6(3) of this part (page 12, lines 21-25 and page 13, line 1-2). We would request that this section be clarified to indicate if this is an amount that can be spent in advance of the fiscal year, the total amount available for certain expenditures, or has some other meaning.

VII. KEY CONCERNS REGARDING APPEALS

This section has been greatly rewritten. It now is much more specific about the grounds for overturning the decision of a local school board. We applaud this change. However we would recommend that the law be amended to contain specific language about the appeals rights of local school boards in cases of disagreement with the school supervisor or the agency superintendent. We feel that it is important to the exercise of Indian control over Indian education that the local Indian school board enjoy the full range of administrative and judicial remedies in support of its authority over local Indian education.

VIII. OTHER AREAS OF CONCERN

Two other areas of concern which have been conveyed to us by contract school administrators concern the question of audits for contract school should be, and is addressed in the contract. Therefore, the requirement in Section 9 of the bill for audits by the Inspector General should apply only to Bureau operated schools.

Contract school representatives also questioned the language in Section 11 of the bill. They believe that they should have the authority to accept voluntary services on their own behalf, without the intervention of an officer or employee of the Bureau. We agree with this position. We believe that the board of a contract school has full authority to act in this area consistent with the term of its contract.

IX CONCLUSION

In conclusion, we believe that H.R. 5190 contains many beneficial provisions and represents a much needed rethinking of some of the provisions of P.L. 95-561, Title XI. We recommend, however, that the bill be carefully reviewed and revised by the subcommittee and full committee to clarify its language and to make the most beneficial use of the amendment process to improve the administration of the law. We urge that the goal of maximum Indian control of Indian education be kept in the forefront in deciding on the appropriateness of suggested revisions and amendments to the law.

Mr. KILDEE. Thank you very much, Dr. Freeland.
Dr. Lovato.

STATEMENT OF DELFIN LOVATO, CHAIRMAN, ALL INDIAN PUEBLO COUNCIL, ALBUQUERQUE, N. MEX.

Mr. LOVATO. Thank you, Mr. Chairman and members of the committee, for this opportunity to be present here today to present comments on behalf of the All Indian Pueblo Council and the education committees that comprise and work with the various education programs in the Pueblo communities.

I want to apologize to the committee. Our written testimony is late in getting here, but we would like to have it introduced for the record once it does arrive.

Mr. KILDEE. It shall be.

Mr. Chairman, I would like to take the opportunity to introduce two gentlemen who are here with me, the Governor of San Ildefonso, Mr. Jay Mountain, and the Governor of San Juan Pueblo, Mr. Richard Martinez.

Mr. KILDEE. I welcome the two Governors here. I met a number of Governors on my trip. I am very familiar with the history of the Pueblos and their Governors, and they play a key role in the government of that area out there.

I want to continue to work with you in the future. I some day hope to have met all the Pueblo Governors and I will work on that.

Mr. LOVATO. Mr. Chairman and members of the committee, the written testimony that will be presented or introduced for the record contains probably a good general summary of all of the comments that have been obtained through various meetings in our Pueblo communities, and at the local level.

I will not go into detail. I wish to comment on several items that I think are of major importance in terms of H.R. 5190. First of all, the facility management program, as it pertains to educational facilities, is an extremely important item, which the committee needs to dwell into.

At the present time, although both the facility management program and the Office of Indian Education programs operate under the Department of the Interior, there seems to be very little coordination in terms of facility management programs, as they pertain to a particular facility.

Let me just point out, I am speaking here specifically of one which is of primary importance to my people and the Santa Fe Indian School campus, one which you have had an opportunity to visit.

The planning, and the contracting or the awarding of the contract for any major renovation on that campus, is handled by facility management with little or no consultation with the Office of Education at the area office.

There is even less consultation with the school board outside of the Indian school. We have tried to get all three parties together to take a look at what needs to be done and no one should know better than the school board who operates the facility.

This has not happened. We brought this matter to the attention of the Department, to the Bureau, and so forth. Nothing seems to take place.

The funding procedures for that particular office is also questionable. We don't know who is calling the shots in terms of what project gets prioritized, what major improvements will take place this fiscal year.

We have not received that. We think that is extremely important in order for the—in this case, the All Indian Pueblo Council, who is the contractor and is responsible for the operation and maintenance of that facility, to know what they are doing and to know what they are planning over the next 2 to 3 years.

This is where the funding procedures and mechanisms which 5190 addresses is important and critical. The procedures that are outlined in the bill or the requirements that are set out in terms of school closures, they are extremely vital to the success of this particular effort.

We have not had an opportunity to review the Bureau's counterproposal, but as far as our organization is concerned, and other facilities within our State that are scheduled for closure, the SIPI facility located in Albuquerque, we think that is an unnecessary procedure.

The Assistant Secretarial proposal that the Director of the Office of Indian Education programs report to the Assistant Director, that is important.

First of all, the Bureau needs to have a Director. We have had an Assistant or Acting Director for the past several years. They should get busy and hire a director to get down to the business of implementing the bill to its fullest extent.

Mr. KILDEE. If at the Department of Defense there was a vacancy, they might be a little more diligent in trying to fill that vacancy.

Mr. LOVATO. We support the comments of earlier testimony, putting contracts at the local level, in this case, the area office for our area.

In terms of standards, Mr. Chairman, I do not see any difficulties with them, be they accounting or academic, the problem has been that we have had Washington level bureaucrats trying to hand down standards to us.

We can meet any standards, I feel, but we need the resources with which to meet those standards and the necessity of funding contract schools or education programs that are contracted at the level that the Secretary would have to have in terms to operate under his authority, we feel is extremely important. But again, I think it has already been brought out, that a 638 contract calls for additional costs.

We are talking about insurance, security, other things that the Secretary does not have to worry about, so I think those types of things need to be negotiated at the local level, and between the school board or the tribe or whomever is going to be running the facility.

In general, we support the proposed amendments and additions contained in 5190 and I am sure, after thorough review, we will have additional comments that we will provide to the committee.

Mr. KILDEE. What safeguards are necessary to insure that tribes, Indian nations and parents are not left out of any decisions on BIA proposals to close or consolidate schools?

Have past BIA efforts at consolidation and consultation on that consolidation been sufficient?

Mr. LOVATO. Mr. Chairman, I think we have been at the center of controversy in regards to SIPI, for instance. The Institute of American Indian Arts, I think each one of those facilities need to be thoroughly analyzed in terms of the people they are serving, their goals, and objectives.

The people they are serving need to be consulted. Their needs for a public forum, if you will, for tribal governments to come in and express their views before any forward steps are taken by the administration or anyone else in terms of closing this facility.

By the same token, I strongly feel that the appropriate committees of Congress need to be consulted before they start putting these things into motion. By doing so, everyone will have a better understanding of what they are trying to do.

Mr. KILDEE. Dr. Freeland.

Mr. FREELAND. It has been our experience that words such as notice, inform, consult, and the like are often given a meaningless interpretation in practice. Under 561, there are local school boards established out on Navajo.

We feel involvement of the local people should be stressed, especially the local school board, because they are the ones who are taking the day-to-day operation of the schools' activities.

Just a comment, we say that the affected Indian tribe and local boards be fully involved in the process of consideration and review of possible closure and consolidation from its inception, and that any such consideration or review be undertaken in coordination with affected Indian tribes and local boards.

That is our comment within our document, in answer to your question, Representative Kildee.

Ms. TIGER. Mr. Chairman, along with consultation, the administration schools should not be run in such manner that they are attractive to the Congress to close. The Fairfax County School Board being recalled, if they were to run a school like that, is important.

Mr. KILDEE. Neglect can lead to almost an accomplished fact, if it takes place over any period of time at all. Sometimes I think all of us suspect that maybe neglect, maybe it took place because they felt that closure would follow from that neglect.

Should the section 2 closure requirements be applicable to situations involving tribal request for closures or consolidations?

Mr. LOVATO. Yes; I think it should apply to the closure of any facility irregardless of who is requesting it.

Mr. KILDEE. Should any exceptions be made for situations where there are serious health and safety hazards? Perhaps you, Ms. Tiger, touched on the issue when serious health and safety hazard have led up to where closure seems to be the only option.

Would you care to comment on whether any exceptions should be made in those situations?

Ms. TIGER. Yes; exceptions should be made, but the next stop to that is, the exception is to immediately close the installation and it should not get to that point, where the facility has deteriorated so much that that is the only alternative.

Mr. KILDEE. At one of the schools I visited in January, someone local who made the statement when I commented on some of the

obvious neglect, that the answer was, well, this school is slated for closing anyway.

Neglect caused a snowballing effect, then. It is the chicken and the egg type of question.

Mr. LOVATO. I think the requirement for public hearings and consultation should not be waived under any circumstances. If it is for health, they ought to tell the people the reason. The Bureau can say, "Hey, we got a health hazard, let's close it down," and they need to consult before the final decision is made.

Mr. KILDEE. Still, go through the process. It might expose a lot of helpful information for that school.

Mr. FREELAND. Mr. Chairman, oftentimes, the situations such as safety and health conditions, are usually looked upon as crisis situations and usually at that point is when concerns are expressed, but if we look in terms of preventiveness and perhaps upkeeping of some of these facilities, we would never have to reach the crisis situation.

It is very obvious that if you have a building that is not safe and is a health hazard, there should not be anyone occupying it.

On the other hand, there should also be appropriations for a new facility rather than just closing the facility without any regards to placement of children.

I feel that if you don't have the facility, then appropriations should be made for a new facility within that same respective geographical area.

Mr. KILDEE. Thank you.

Mr. Gunderson.

Mr. GUNDERSON. As I listened to the testimony from all of you, I get the impression that there is nothing wrong with the present law. You just don't like the way it is administered. Is that correct or incorrect?

Mr. LOVATO. Generally speaking, yes, sir.

Ms. TIGER. Essentially, yes.

Mr. FREELAND. The basic language does need some clarification, as we view it. As I have indicated earlier in our document, we have made some suggestions for clarification, additions, deletions, and changes within the present 561 amendment.

Mr. GUNDERSON. Ms. Tiger, in your statement, you indicate on page 2 that you urge the committee to consider specific legislative guidance to the BIA-MIS, the personnel system that it is charged with carrying out those mandates.

Would you elaborate a little bit? What kind of legislative guidance to the personnel carrying out the program are you suggesting?

Ms. TIGER. I think, after our tribal education representatives have an opportunity to meet on this, we can give you very detailed elaborations. Until that time, our only point is that we are all in general concurrence, the key to carrying out all of these mandates are the people charged with carrying them out.

A large part of the inadequacy is that there are problems inherent to the civil service system. Some examples come to mind and one that I am familiar with, the requirement for education administrators within the Bureau is 12 credit/hours of post-baccalaureate work, and this is not an NCI instance, but quite possibly, that cou-

ples with even longevity in the system does not necessarily prepare a person for the charges that these massive reforms in this law, as it first came out in 1978, called for.

In addition to that, there are some things that we feel are relatively straightforward, like the establishment of a MIS system integrated Bureauwide, which makes good managerial sense, has not 6 years later been implemented.

We feel that has been enough time, and the money that has gone into that, it has certainly been adequate and we still do not have an MIS system.

That can only come down to the personnel system charged with establishing that.

Mr. GUNDERSON. I would be interested if you all could elaborate on the issue of school closures. I look at an analysis of H.R. 5190 and it says in order to have school closures, the Secretary must publish standards and procedures and these standards must include four points.

First, notice to all concerned as soon as school review is under consideration. Second, a prior study of each student's needs. Third, a full report to the Congress, including plans for student followup; and fourth, a time line barring the action for no less than one academic year.

I come from a rural area and attended the two-room country school for the first 6 years of my education. That school has since been closed by the local school board.

If we mandated these kinds of requirements on local school board and administration, there would never be any school closures any place in the country. It seems to me that we may be excessive here with these kinds of requirements.

I would appreciate some edification on the problems which require some kind of legislative action.

Mr. LOVATO. Mr. Chairman, I think the problem has a lot of political connotations as well. The situation does exist in some communities in my own State, with members of our own organizations situationed where fewer and fewer Indian students are going to their local day school, OK?

All we are saying is if the time does come when the parents of that community want to send their children to school elsewhere, that is their right.

Before the Bureau takes action on that facility, however, that tribe and those parents need the right, if you will, to sit down and discuss the problem and to see what they are going to do with that facility over the next 10 years.

That is all we are saying. I think that the procedures that are proposed in 5190 may go to that point. I don't know to what extent they are practical.

Mr. GUNDERSON. But you have a problem if we just required consultation with members of the local tribes before such closures can occur?

Mr. LOVATO. Consultation is a weasel word. The Bureau gets out of it all the time. I would suggest public hearings, public notice before those hearings. I would suggest that the parents, the student body, the tribal government need to be involved in that process.

Mr. GUNDERSON. I have no problem with public hearings and public notice, I don't know who defines an "all concerned." Who defines what is required in an individual plan of each student's needs prior to a school closing? That is a bureaucracy to the greatest degree. I really have problems with that. Which students are involved? Is it present students or those who might be students in the future? Who defines those kinds of things? Should a report to Congress be required on each school closing?

I find that overly bureaucratic. Go ahead.

Ms. TIGER. If I may point out to you that I believe those caveats evolved from a demonstrated need and track record. One who is not familiar with what Indians have experienced in terms of the arbitrary need for the school closings, it may seem like undue bureaucracy.

From what I have seen, it is unfortunately necessary.

The public schools have a demonstrated track record of being very unresponsive to Indian students across the board.

Two recent statistics I had occasion to get the other day, our Indian young men have a suicide rate three times that of, I hate to say a norm, three times higher than that from IHS vital statistics.

Our dropout rate is nationally at least double that of the rest of the schools. This is why the U.S. Department of Education Department programs are just beginning to make some impact. The National Congress Tribes of American Indians, three of which are in your States, would wholeheartedly endorse that this needs to be done.

Mr. GUNDERSON. That is why I ask.

Share with me some details of the problems. I am sincerely most interested in that. Go ahead.

Mr. FREELAND. Oftentimes in the past, decision usually are coming from the top down without any regards to the local needs of the Indian children. Oftentimes, before any closure to even be attempted, local school boards, as I mention, should be involved, that would also involve the parents at that local school.

They themselves can express their concerns, their immediate needs, because of conditions that they live within. For example, roads are a problem in some areas. If the roads are impassable during wintertime, it might be best oftentimes for the child to remain there.

You can get a lot of information just by asking parents their thoughts, their comments, rather than sitting back in an office and making administrative decisions as to how a close would affect we as bureaucrats, rather than considering the student as the main focus in asking their parents, how would it affect you, and what are some suggestions coming from you and just by asking the grass-roots their thoughts, their opinions and receiving comments, we can learn a lot more than trying to make a bureaucratic administrative decision from the top.

Mr. GUNDERSON. Certainly consultation, I am certainly for public notice, public hearing and consultation. Probably all of that is justified. If we can all reach a middle ground on this, I am for that.

Mr. KILDEE. The language included in this bill on the consolidation and closing safeguards, has been lifted from the appropriations bill language, because they found, for example, with Inner Moun-

tain, the Appropriations Committee wanted to make sure there was a procedure for consolidation and closing, so we picked some of the reasoning from the Appropriations Committee on that.

I have noticed, in my 20 years of Government service, that if you use the word "consultation," that can mean a telephone call to a person out there who might have the right answer.

That has happened in Government, and I know Mr. Gunderson recognizes we need more than that word, "consultation." Part of the problem, too, in closing and consolidation, is that the decision is made for fiscal reasons by the OMB, rather than for educational reasons in the BIA.

I always get a little frightened when under the cloak of good education, they have some real fiscal reason for doing it. Education does cost, and education in Indian country, because of the distances, is going to cost more, particularly if we want to keep those children close to their families, and not have them on the buses for ever and ever. We have to recognize that things are different in Indian countries than they are in Fairfax County across the road here.

If I may talk about Fairfax County, they have been having hearings for months and months and months, because they are talking about boundary changes between Langley and McLean High Schools. There is really due process and real involvement.

I would hope we would consider the Indian people as having the same amount of input as the people of Fairfax County have when they propose changing the boundary line from this road to this road.

We would at least want to treat the Indians as well as the people of Fairfax County are treated, and I don't recall any treaty we signed with Fairfax County. We signed some treaties with the Indian people concerning education.

We want to make sure we do have a proper procedure. We have a proper procedure. We have taken language from the appropriations bill, but certainly we are seeking input to make sure we safeguard the right of Indian parents, Indian students and safeguard that in a reasonable but effective way.

Let me ask one more question. Would you care to comment for the record, on the bill's proposals and forward funding, and how it might specifically help the schools?

Ms. TIGER. That has been thoroughly debated by our member tribes and our education departments and wholeheartedly endorsed as a critical necessity. The example that most of us went through with the proposed changes in fiscal year 1984's ADP reallignment moneys is a recent example of the types of shortcomings of the current system, and that coupled with the fact that I understand BIA-OIEP is the only Federal education office that does not forward fund, there is every good reason, every good sound fiscal planning, all other aspects of planning reason to forward fund.

We can't think of any reason why this aspect of the law should not be put in except for the financial reasons that you point out, the one, double funding.

Mr. KILDEE. When you consider the total budget of the United States, the amount of financial element on this is not really going to cause Dave Stockman any sleepless nights.

Cap Weinberger gives him more things to worry about than the dollar amount, than as does the BIA. I am not worried about any critical problems on forward funding. It is like the tip of an airplane in the Pentagon budget.

Mr. FREELAND. Congressman Kildee, forward funding has always been a goal of the Navajo Tribe for the BIA's educational programs, but just as a matter for record purposes, we did read that section on forward funding. We are somewhat unclear as to its meaning, so we did make that comment, but we are glad to see that forward funding is mentioned.

We do record a date of the first publication of the allotment be set at April that is what we are recommending rather than July 1.

By this date, the allotment should be known, by April 1.

Mr. LOVATO. We agree. That is the same recommendation that we made, that they move the date up to April 1, I believe.

Mr. KILDEE. If you could, and we are probably going to get a substitute drafted for markup on subcommittee level and then we will also seek more input before we go to full committee on that. We will keep this bill really open, so we can get it in as good shape as possible, recognizing that the Congress has yet to have passed a perfect bill, but we would hope to pass a very good bill on that.

We hope to keep that open. If you could make some preliminary comments to this committee in writing or call Mr. Lovesee with your comments on the subsequent bill and inform us on what things you might feel are good or bad about it.

I thank this panel for your very helpful input.

[Prepared statement of Delfin Lovato follows:]

PREPARED STATEMENT OF DELFIN LOVATO, CHAIRMAN, ALL INDIAN PUEBLO COUNCIL, INC.

Mr. Chairman, my name is Delfin J. Lovato, Chairman of the All Indian Pueblo Council, Inc. We appreciate the opportunity to address this committee. We would like to commend the Committee on Labor and Education for its interest and concern in Indian Education, especially at this time in our nation's history, when there seems to be mixed feelings and confusion concerning the best route for education of Native American youth. This Committee on Labor and Education and more particularly Congressman Kildee have demonstrated that there is a bright future for the education of our Indian children.

My remarks will be addressed to those technical amendments to Title XI, Education Amendments of 1978 relating to Indian education, which impact directly the education of our Indian children. In general, we are in agreement with the proposed changes, however, we would like to see the following included or considered:

I. Standards.—Sec. 2.(B) the Bureau shall . . . establish uniform fiscal control and fund accounting procedures for all contract schools . . .

Response: If our interpretation of the amendment is accurate, we agree that standards are a central part of fiscal control and fund accounting procedures. However, if this means that another mandatory system would be placed on the one we have successfully operated for the past seven (7) years, then we could not agree with this change.

II. School Boundaries.—Sec. 3., Section 1124.(F) Multitribal boarding schools located off-reservation shall . . . (contain) non exclusive major attendance areas . . . recognize and respect parental choice . . .

Response: We strongly agree that parental choice needs to be the major factor in school attendance. We also think that any final appeal on school attendance should be dealt with at a tribal level rather than by the Secretary. An appeal board or committee composed of tribal peers could best meet this need.

III. BIA Education Functions.—Sec. 4(a)(b) The Director of the Office of Indian Education reports directly to the Assistant Secretary for Indian Affairs with contract function.

Response: We believe that this is a good idea provided that the contracting functions be delegated to the local level education personnel at the Albuquerque Area Office.

IV. Allotment Formula.—Sec. 5.(E) Special transportation and other costs of isolated and small schools.

(F) Costs of boarding arrangements . . .

(G) Costs associated with greater lengths of service by educational personnel.

Response: We recognize these special needs, however we feel that (1) additional monies are needed to meet these needs outside of the regular allocation, (2) these needs should be established and reviewed by the Bureau/Tribal leaders.

In addition we feel monies need to be allocated under the allotment formula for Gifted and Talented Indian Youth. Indian education programs have traditionally been remedial and focused on children with learning problems. However, national statistics and our own experience at Sante Fe Indian School confirm that many Indian children are gifted and talented and that they show impressive gains when offered programs to meet their unique needs. There is a line item in the funding formula under P.L. 95-561 for gifted and talented students, but funds have never been included for this item. Funds must be provided to enable schools to meet the needs of the brightest Indian students, as was the original intention of P.L. 95-561.

V. Allotment Formula.—Sec. 5. Sec. (3) The Secretary shall provide to all contract schools an amount for administrative and indirect costs . . . equal to the amount . . . expended by the Secretary if such schools were directly operated by the Secretary.

Response: This amendmont change is acceptable provided that (1) the entire allocation of the Office of Indian Education Programs is used as a basis for determining the amount expended by the Secretary, and (2) consideration is given to costs incurred by a contract school which are not incurred by the Secretary, i.e., insurance.

VI. Uniform Direct Funding.—Sec. 6. Sec. (2)(A) Funding . . . available for obligation . . . on October 1, Sec. 6. Sec. (2)(B) The Secretary shall . . . publish on July 1 . . . allotments of 85 percent of such appropriations; and . . . September 30th the allotments for the remaining 15 percent.

Response: One of the greatest obstacles to the successful operation of contract schools results from the delay in the availability of new fiscal year monies. The uniform direct funding proposal appears to adequately address this problem area with the single following exception. Publication of allotments should be April 1st rather than July 1st in order to allow adequate time for hiring staff.

VII. In addition we feel a needed criteria to be included in these amendment changes is:

Cost of Living.—The funding formula under P.L. 95-561 distributes Indian education funds that are generated by student enrollment. Unlike the majority of federal programs, the P.L. 95-561 budgeting process does not include an automatic cost-of-living increase for staff salaries. As costs to the school go up, the amount of funds generated by enrollment has remained the same or even decreased. If contract schools are to remain solvent, it is essential that the legislation be amended to include a built-in cost-of-living computation that would permit salary increases for staff at contract schools. If this is not done immediately, school budgets will be locked into increasing amounts for salaries, which will lessen the amount available for the educational program.

In conclusion, Mr. Chairman, I would like to reiterate our appreciation of this committee's interest in Native American youth and the leadership role the committee has taken in the field of Indian education.

Mr. KILDEE. Our next panel will consist of Mr. Roger Bordeaux, president, Association of Contract Tribal Schools, St. Francis, S. Dak.; Mr. Travis Jackson, school board member, Sequoyah Indian High School, Norman, Okla.; Mr. Wayne Holm, assistant director, academic, Rock Point Community School, Chinle, Ariz., accompanied by Mr. Bobo Dean, Esq., attorney for Rock Point Community School; and Ms. Gay Lawrence Kingman, superintendent, Pierre Indian Learning Center, Pierre, S. Dak.

Who wishes to testify first?

STATEMENT OF TRAVIS JACKSON, SCHOOL BOARD MEMBER, SEQUOYAH INDIAN HIGH SCHOOL, NORMAN, OKLA.

Mr. JACKSON. Mr. Chairman, I have a statement I will submit for the record.

Mr. KILDEE. That will be submitted in the record.

Mr. JACKSON. I would like to change a little bit of what I anticipated going through to answer the Congressman's question regarding the legislative language written into the closure, the procedural steps.

What is very important to understand is that the type of student body we have to deal with; and most of my testimony, most of the comments I will be making result from being on the firing line, since Sequoyah is one of the schools proposed for closure in 1982 and 1983.

I worked with the Concho Indian School Board at a time when they went through the Indian School Board, and also working with Riverside and chairman of the ad hoc committee for off-reservation boarding schools, getting comments from those members.

Looking at Sequoyah, is the student body which I have some information which I will submit, is supplemental—our student body of 200 students, we have approximately 115 which have social problems.

The balance have education and social problems; meaning that these students primarily have come out of public school systems because of dropouts or their inability to function within that system.

It is also related a little bit to problems within their family setting, so they have unique problems when they come to the boarding school.

As such, when we face closure action, it is a very major concern of ours that that student's needs are pretty well defined as to where they will best benefit in their future educational experience.

If they come out of the public school system and we are looking to sending them back, we have serious questions if that system has changed enough to adapt to their needs. Under the consultation process we went through in Oklahoma, one problem was the time line. In the Bureau report that came out regarding the consultation process and the closure, report May 27, 1983, a report by the Department of Interior, under section "Consultation," their initial paragraph listed a time line of, one, consulting with the Senate select committee. On March 15, 1982, a press release was issued to the general public, and then a notice of proposed closure was published on March 17, and a public hearing on the proposed closure was held in Oklahoma City on April 6, 1982.

This is maybe not typical, but quite often happens. This was the process for Concho's closure, not Sequoyah's. By the time the notice did get to the public and by the time tribes were notified, it was well within 10 days prior to the public hearing which we raised some concerns about because that was in violation of our sunshine laws in Oklahoma for a public meeting, and so people were not aware of the closure action, nor did they have time enough to respond.

For tribes, that was a major problem in that they require at least normally 30 days to have a tribal council meeting, so—and then

there were other costs involved in calling a special meeting, so most tribes did not have time to respond to that closure, even though we had a vested interest, because we had children going to Concho from the eastern part of the State.

Now, their second statement in the report pretty well outlines what occurred as far as Sequoyah. They announced the closure on July 30, 1982, and then they held a public hearing on August 6, 1982.

The problem with that is we didn't even know who our parents were going to be for students, because this was prior to our school year, so we did not know who to contact except maybe the parents of students who are there the year before.

Another problem is locating those parents, so within the time line and getting them to Sequoyah to testify was very difficult and so, the response was very supportive of keeping Sequoyah open, but was based on emotions rather than data or supporting information that would address the questions the Bureau had about keeping Sequoyah going.

It is very important that the legislative language is written into the bill as proposed, because we feel like it is very necessary.

What policies come down doesn't necessarily translate into practice. We need that assurance. The other factor is that we feel it is very important that the language does seek consultation or—I think it is a study that is required by the Secretary, of the service provided, that is keenly important, because looking back at the students at Chilco, and schools that have been closed.

We do not know what has happened to those students. There are no followup studies, and we are very concerned that a lot of them may have drifted into the juvenile correction systems. We have a lot of students involved in drugs and alcohol—we have a lot of students that are in custody in the court system.

We tend to think that by the evidence that these students do not go back to the public schools, they drift out and are not receiving the educational experience that is necessary.

I would like to be into another area that is very, very important and that is the topic of school boundaries. We feel like it is very important that these boundaries are set up, but in a nonexclusive type situation and specifically, because during the relocation period of Indian people out of Oklahoma, many of our people were sent to California, Chicago, to the various urban areas to seek employment funded by the Bureau.

Some were students of Bureau schools and who have parents or extended family members living in Oklahoma. If they are having difficulty, or if their children have needs, they will send them back to Sequoyah to put them closer to their family network.

Under the proposed boundary areas, there are two criteria that would undermine that whole process. They state students will be allowed to attend outside their attendance area for the following reasons:

One, to obtain specialized curriculum offerings; and two, special circumstances which are justified and which allow the director of OIEP to improve the attendance enrollment.

No 2, that would be very restrictive. One, it would take the actions of the Director, and it has to be special circumstances, so we

and the ORBS system, have expressed opposition to an exclusive boundary system.

There have been a number of meetings held and each time the school board has rejected it.

The Bureau has not consulted with our tribes and has not consulted with the school boards. It comes up on the agenda as an area of discussion and without any kind of discussion with our tribal leaders, it is impossible for a school board member to state a position. Therefore, we have refused to discuss the issue, although we were not against an attendance boundary setup if it will facilitate management, but as long as we view that it could be exclusive, we would definitely be against it. We feel that it is very important that the rights of parental choice is maintained.

I will stop at that point and hopefully, Congressman, if you have other questions on the boundaries, we support the comments that have been made here, and I think there is some language that we are concerned about which is pointed out in our written statement.

I would hope you would look at it, because we don't need more confusion. Our concern is to see that the policy does reach the local level and transmits into good educational services for our Indian children.

Mr. KILDEE. We do not have the exclusive language in the bill on the off-reservation boarding schools, and you would support it?

Mr. JACKSON. Yes, definitely.

[Prepared statement of Travis Jackson follows:]

PREPARED STATEMENT OF TRAVIS JACKSON, VICE-PRESIDENT, BOARD OF EDUCATION, SEQUOYAH HIGH SCHOOL

Mr. Chairman and Members of the Committee:

I appreciate this opportunity to appear before this committee to express my views and comments on the Indian Education Amendments of 1984 (H.R. 5190).

Today, the Bureau of Indian Affairs' school system varies dramatically from what it was like during the 1880's when army posts or barracks were utilized as training schools for Indian youth. Unfortunately, in those days, as is still the case today, we as Indian people are still incurring barriers to our right to govern our own internal affairs in all matters relating to education.

We are well aware of the long-standing Federal policy to transfer the responsibility for Indian education from the Federal government to the states. However, I am not here to discuss my belief as to the reasons why Indian education is a "trust" responsibility. But, I am here to speak to the merits of the Indian Education Amendments of 1984, and to the significance of this legislation towards assisting Indian tribes in assuming greater responsibility for the education of Indian children.

In order to provide this committee with some understanding of the need for this legislation, I will take the liberty to review some historical events relevant to these amendments. In the early 1960's the "Kennedy Report" issued by the Senate Subcommittee on Indian Education recognized the failure and the disastrous effects of the Federal policy of coercive assimilation of Indian children into the public school system. Another Senate investigation into the Federal Indian education programs in the late 1960's was conducted by a special Subcommittee on Indian Education, Committee on Labor and Public Welfare. Their report, "Indian Education: A National Tragedy, A National Challenge" (S. Rep. No. 501, 91st Congress, 1st Session 1969) cited numerous educational deficiencies within Federal and public school efforts to meet the needs of Indian children. Three significant findings were:

1) American Indians have little, if any, influence or control in the education of their children in the public schools.

2) Public schools educating Indian children rarely include coursework which recognizes Indian history, culture or language, and often use materials and approaches which are derogatory towards Indian people.

3) Little attention is paid to whether Indians want their children transferred from a Bureau of Indian Affairs operated school to a public school, or whether the public school is ready to accept Indian students, when the decision to make such a transfer is made.

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Consequently, due to the overwhelming evidence of these cited reports, hearings, and other major Congressional studies, Congress enacted landmark legislation designed to enable Indians to assume greater responsibility for the government and education of Indian people, with fuller participation in programs and services conducted by the Federal government for Indians. Examples of such legislation include: Indian Education Act of 1972; Indian Self-Determination and Educational Assistance Act of 1975; the Indian Child Welfare Act of 1978; and the Education Amendments of 1978 (PL 95-561). Central to these acts was the endorsement of the right of Indian people to "self-determination" as a national policy.

Unfortunately, the translation of these legislative acts into a statement of policy which would facilitate Indian control of Indian affairs has not effectively materialized to date. Some of the barriers to this development are being addressed in H.R. 5190.

It should be noted that, although a majority of Indian children now attend state-supported public schools, a significant number of Indian children are still in need of Bureau-operated schools. In support of this statement, we will refer to a recent national study, "Executive Summary: The Evaluation of the Impact of the Part A Entitlement Programs Funded Under Title IV of the Indian Education Act", (U.S. Department of Education, Washington, D.C., July, 1983) which stated:

- Indian students' academic achievement test scores are consistently below the means for non-Indian students;
- Indian students continue to have high incidence of dropout rates at the high school level in public schools;
- Indian students at the junior and senior high school levels need academic assistance as well as strong encouragement to stay in school.

In Oklahoma, we have approximately 79,000 Indian children attending public schools. If our current trend continues, a significant portion of these children will not graduate from high school, some will be subject to court supervision, and others will become dependent upon the social service network.

In many areas, Indian children are subject to adverse social and economic conditions as compared to non-Indian children. In Oklahoma, the poverty level among Indian people is estimated at between forty and fifty percent - this in a state which is lower than the national average in per capita expenditures on public welfare, well below the national average for percentage of its population receiving public assistance, and which pays among the lowest welfare benefits in the nation (Profile: Poverty in Oklahoma, Fall, 1981).

I do not feel these conditions are unique to Oklahoma. The 1980 census indicates the percentage of Indian elders who were below the national poverty level had increased to sixty-one percent, the highest percentage of any group in America. The median income level for Indian elders was $1,500 per year (Fact Sheets: National Conference on Indian Aging, March, 1984). The impact of these statistics is significant due to the familial patterns of Indian people, which, in many Indian communities, includes the maintenance of the extended

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family concept. With the unemployment in some reservation areas averaging from 37 percent to as high as 95 percent, it often becomes necessary for parents to seek employment in urban areas. As such, it is not unusual for the grandparents to raise the children.

Clearly, there are significant differences in the social and economic experiences of Indian and non-Indian children. Therefore, it becomes vital that the educational system be responsive to the distinct educational needs of our Indian children. It is our belief this will not occur until Indian people have control over the educational programming of our schools.

In light of my personal philosophical belief in self-determination, and my belief that education is an intregal part of our overall future tribal development, I submit the following comments on sections of the Indian Education Amendments of 1984. My comments will be guided by my personal experiences as a school board member of a Bureau-operated boarding school and as Chairman of an Ad Hoc Committee for Off-Reservation Boarding Schools. The following comments are not intended to be totally exhaustive but rather to reflect those aspects with which I am most concerned.

Education Amendments of 1984

Section 2: Standards: "The Secretary shall, by regulation, promulgate standards and procedures for the closing or consolidation of Bureau schools."

This section is of major importance to future affected schools and school boards. At Sequoyah Indian School and Concho Indian School, both located in Oklahoma, we were subject to many adverse reactions of students, staff, and parents during a period of closure activities by the Bureau from March 1982 through the fall of 1983.

At Sequoyah, the announcement of closure actions, the scheduling of public hearings, and consultation activities all were conducted within a very restrictive time period. Information as to the procedural actions was limited only to Bureau personnel; therefore, the affected population was unable to respond properly to the Bureau's proposed actions.

Under Section VIII, "Consultation on Proposed Closure of Sequoyah," A Report on Off-Reservation Boarding Schools Operated by the Bureau of Indian Affairs (Department of the Interior, BIA, May, 1983, C-12, p. 79), the timeline between public notice of March 15th to the public hearing on April 6, 1982, in Oklahoma City was inadequate allowance for tribal response. Most tribal governments require a minimum of thirty days notice to schedule a council meeting. In addition, in Oklahoma, the public hearing site was not central to either of the involved boarding schools. Therefore, distance factors restricted a broader community response.

As stated, Sequoyah was immediately affected with internal problems due to the "uncertainty" of future operations. These internal problems included low staff morale, increased absenteeism, increase in dysfunctional behaviors among students, and a general decline in employee and student performance. In discussion with Concho School board members, Concho experienced similar problems. Unfortunately, Concho was subjected to much greater traumatic

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experiences with its eventual closure and the transfer of its operations to Riverside Boarding School in Anadarko.

It must be noted, the transition of staff and students from Concho to Riverside is an excellent example of the need for this amendment. The lack of standards and procedures to facilitate an orderly transfer and consolidation of Concho and Riverside resulted in many unnecessary transitional problems which still continue today.

I strongly support the timeline which bars action for at least one academic year from the Secretary's full report to Congress. In my opinion, this is consistent with the Congressional plenary power expressed by the courts. Further, it assures a proper organizational response for transfer of educational programming.

Section 3: School Boundaries

A major concern for Off-Reservation Boarding Schools (ORBS) is the proposed consolidation plan by the Bureau for the ORBS system. The first notification of this action was disseminated to schools on May 19, 1983 by the Acting Assistant Director, Office of Indian Education Programs. An ORBS meeting was conducted by the Bureau in Denver, Colorado, on June 22 and 23, 1983. Another meeting for eastern Oklahoma tribes was held on June 10, 1983 at the Muskogee Area Office to discuss, among many subjects, the implementation of attendance areas/boundaries for the ORBS system. At both meetings, school board members rejected the proposed attendance areas as in violation of rules and regulations regarding the Indian Education policies (Section 25 CFR Part 31a4(i)) which state in part ". . . Each school shall establish its attendance area in cooperation with neighboring schools."

In November, 1983, an ORBS meeting was held in Phoenix, Arizona. As part of the agenda, there was discussion of the proposed establishment of geographic attendance boundaries for the ORBS system. Again, the school board members rejected the proposal and refused to participate in any discussion of it. Primarily, this action was based upon the following issues:

- There was no consultation with the affected tribal governing bodies or school boards.
- The proposed boundaries appear to be designed as "exculsive" attendance areas.
- The merits of the proposed plan of action have never been clearly stated at the various ORBS meetings.

In my opinion, this section is necessary to assure that the BIA respects the right of parental choice regarding their children's educational needs. I have some concern with the phrase, ". . .to the extent consistent with the best interest of the student" (Section 3 (f) Line 13-14, p. 8). It has been the policy of the OIEP to place students near their homes; therefore, it is possible this phrase could be interpreted in a restrictive manner. As such, it could be in conflict with the language to establish "nonexclusive major attendance areas". I urge this committee to consider revision of this phrase to avoid any misinterpretation.

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Section 6: Uniform Direct Funding

As of this date, Bureau-operated schools have not received their final advice of allotment for FY 1983-84. With less than six weeks remaining in this current academic year, schools and school boards are still operating on a tentative budget. I am certain this Committee can appreciate the difficulty of conducting business under such conditions. This situation not only prohibits effective planning activities, but also allows conditions to erode the educational programming.

I support the amendment for foward funding, with additional suggestions for consideration:

- Change the funding cycle to become congruent with the academic year. To increase efficiency and effective management, the school budgeting process and allocation process must be on a different cycle from the current fiscal year method.

- Re-evaluate the timeline for distribution of the final segment of funds by September 30th. This will avoid possible efforts by school officials to keep problem or troubled students only for the purpose of student count. Therefore, a delay in this timeline could maintain the continued commitment of staff to work with this segment of students.

Section 7: Appeals From Actions of School Boards

This section provides for a major improvement in the procedural steps necessary for a school supervisor to appeal any action of the local school board by filing a written statement describing the action and reasons that the supervisor believes such an action should be overturned. This procedure should enhance working relationships between school supervisors and school boards. This procedure will create an objective approach to resolving differences, rather than fostering subjective reactions by either party.

It is not uncommon for ORBS school boards members to voice concerns about internal problems related to the lack of communication regarding supervisor appeals to the agency superintendent for education.

Section 3: Allotment Formula

This section addresses some very necessary changes in the funding formula; however, it fails to meet some critical needs of the ORBS system. These needs are:

1. There is a need to weigh the allotment formula to provide a reasonable allowance for local school board training and activities.

The OIEP has set forth policy that school board expenses shall be developed as part of the local financial plan which is subject to review pursuant to 25 U.S.C. Sec. 2009 (b) (Interim Guidelines Affecting School Board of Bureau Operated Schools, BIA, October, 1983). However, it further states in the guidelines that "In planning for school board expenses, the board should assess the impact of such expenses on the school's educational programs."

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To operate under the above guidelines, school boards are subject to self-imposed restrictions due to declining budgets and increasing personnel and programming costs. Therefore, boards are reluctant to allocate necessary funds to enhance their skill levels or to participate in activities for professional growth. This current state of affairs is also limiting delivery of educational services necessary to meet the total educational needs of Indian students currently enrolled in Bureau schools.

2. <u>There is a need to define the legal status of OEAS school board members</u>.

The question of major concern is: "Are school board members subject to legal representation by the Bureau of Indian Affairs in civil actions?" If not, "Can school boards expend Federal funds to obtain legal protection?"

In two incidents, the Sequoyah School Board requested legal council from the Muskogee Area Office regarding actions by Bureau personnel. The request was refused on the grounds that school board members are not government employees. In our attempt to obtain liability insurance for the school board, we were informed this would be a disallowable expenditure.

3. <u>There is a need to advance funds for travel expenses of school board members</u>.

School board members are entitled to receive reimbursement for personal expenditures made in the interest or conduct of official business of the school--if approved by the board. However, school board members are ineligible for advancement of funds for authorized activities because of their status. This is a major problem for school board members since many do not have the financial resources to expend monies for travel and then wait the normal three to six week for reimbursement.

I encourage this Committee to strengthen this section to facilitate the professional development and growth of school boards through an equitable funding allotment.

In summary, as the representative of the School Board of Sequoyah High School in Tahlequah, Oklahoma, we encourage passage of these amendments and ask consideration of our suggestions for improvement. If it is the intent of Congress to allow Indian people to have greater responsibility for the education of their children, these amendments will strengthen that process and hopefully lead to a more consistent and mutually observable policy on BIA education functions within the Department of the Interior. It is vital to the interests of Indian children that the Office of Indian Education Programs establish a clear definition of policy at each level of the Bureau. These clear policies can then translate into practices which will ensure that the quality of educational services is maintained at a proper level and that school services meet the needs of Indian children.

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Mr. KILDEE. Thank you very much.
Our next witness.

STATEMENT OF GAY LAWRENCE KINGMAN, SUPERINTENDENT, PIERRE INDIAN LEAI NING CENTER, PIERRE, S. DAK.

Ms. KINGMAN. Mr. Chairman and members of the committee, my name is Gay Kingman, superintendent of Pierre Indian Learning Center, and it services a State area which takes in 15 tribes, and the board of education is made up of tribal councilmen from each of those tribes in the area.

Our students are children with special needs in that they are either special education children, orphans, or children who come to us who are court-referred.

They are children who have been sent to us from the tribes for an education. We are a contract school.

I wanted to come in today with two purposes in mind. One is to testify on 5190, but the other is also to express my appreciation to Mr. Kildee and the staff, in particular general counsel, Mr. Alan Lovesee and Mr. Jeff McFarland, because of the time and effort they have spent in working with us in a lot of the wording in the bill, and I really express my appreciation at that point.

They have spent numerous hours in doing this, in trying to achieve and meet some of the needs that we in the field have with our school systems.

As far as addressing the bill, the first one on the immunization, we as a contract school did see that all of our children are immunized totally as far as—we work with Indian health at the local level to get that completed.

Our problem lies in communicating with the various reservations, and so, in the regulations when that is worked out, if something could be put in there to work on communication, because many times the parents do not keep the records. We have to send numerous times in writing for that.

As far as standards go, Pierre Indian Learning Center is a State-accredited contract school, but we also try to achieve alternative standards to meet the special needs of the Indian children that attend.

This is sometimes difficult because we have Lakota Sioux children, as well as Winnebago and children that come to us from different tribes.

In meeting alternative standards and trying to address the culturally related needs of these children, it can get complex, and I would hope that the contract school associations can give a lot of input into setting up those standards, because I think only the organizations made up of people that work with these schools can do that.

As far as the Director of the Office of Indian Education Programs, it is my understanding, and I stand to be corrected, that in the original 561 that the line authority was put in place there, that education would report to the Assistant Secretary, that in the recent administration, that the regulation was set so that the Director of the Office reported to the Deputy.

I feel strongly that the Director of the Office of Indian Education Programs report solely and directly to the Assistant Secretary of Indian Affairs.

In my past experience, I did serve on the transition team that worked on placing the Department of Education in place, and I realize fully, unless you report and are on the lifeline or report directly to the powers that be, you tend to be placed lower down and do not have the priority that should be extended to you.

That is why I guess I really believe that the Office of Indian Education Programs, and stress fully, that that program should report directly to the Secretary of Indian Affairs in order to give that office the credibility it deserves.

As far as facilities, this has been a very sore spot with the board of education of Pierre Indian Learning Center. To give you an example of our problems at the local level, I was very happy to hear this morning that this was a hot, burning issue in the central office, as Mr. Fritz said, that facility management be taken care of.

I hope this is going to be filtered down to the area offices. And in 1981, my board of education started proceedings for construction renovation of our school system.

At this point in time, we have, as of Monday, received 100 percent complete plans, and that is 1984, of the facilities. There are pressing problems such as safety and handicapped, and of course, dealing with the children that we have, handicapped is an issue.

Needless to say, in 1984, the facility plans are completely outdated. We have doubled in size. We have also added new programs and the 1981 initiated plans are outdated.

The committeewide facility management really needs to become more accountable. The allotment formula, I think I have no problem with it, just in the delivery.

Everything seems to be behind the fact, I think, by the time it gets to us. I really believe that forward funding would assist us. Chapter 1 would be here, again, an example of what is happening with forward funding.

We do receive our chapter 1 funds early. However, as far as the management fund, the operation funds, that comes far too late. As far as our facilities funding at this date, we have not received our allocation, and we are 8 months into the school year, and it is almost time for closure.

On Monday, when I was in the Aberdeen area office, I was informed that they had received the amount, but it had not been broken down yet so our center still at this time does not have our facility management amount.

We were told to spend up to 65 percent of last year's budget. We are told that we may or may not receive an increase, and this being a year where we have had emergency funding costs, in December when we underwent such a tremendous cold spell, we tripled our fuel bill costs for the dormitories, and it extended and we received a memo from the—I guess it was the Central Office—filtered down to the Aberdeen area office, saying that well, the funding would balance out when we receive mild weather in the spring.

These are some of the things that we are dealing with, and when you have children, you cannot tell them this. We must maintain our facilities. The heating has to happen.

These are things that we cannot put aside. I guess the last thing I would just mention here is the accountability. We have received monitoring from the Aberdeen area, and I appreciate this.

I think the contract schools are in the circumstances of not wanting to be accountable. I would welcome any visit to my school, if it would mean that we would get the funding we would need for our students and get it on time.

This has been our biggest problem. I have given you an oral testimony, and like Mr. Lovato, my testimony is somewhere in route.

STATEMENT OF ROGER BORDEAUX, PRESIDENT, ASSOCIATION OF CONTRACT TRIBAL SCHOOLS, ST. FRANCIS, S. DAK.

Mr. BORDEAUX. I am Roger Bordeaux, the executive director of Sicangu Oyate Ho, and I am also the president of the Association of Contract Tribal Schools, which is a national organization of schools which primarily try to serve those schools and any other school that wishes to go contract or need help in local control or something like that.

I think I would like to maybe just highlight what is written in my testimony and go on a little bit to what was commented earlier by the Bureau and yourself.

First, 561 itself was an improvement, a good improvement on the delivery of the services for which the Federal Government has responsibility.

I think the current resolution would also improve the services with some clarification, and some clear definition and a couple of other things, but as a whole, I don't see too many problems with the amendments.

The problems that I do see are specifically the ones that affect the contract tribal schools and one is in relation to the standards.

In 5190, it says that the contract tribal schools have to follow either the standard set by an accrediting agency recognized by the Secretary of Education or the State in which the contract school is operating.

We would like very much to have that broadened and not only for our own sake, but also in keeping in line with the policy of 561, which basically is section 1130.

That is the main policy section of 561 which states local control for all matters of education, and when you talk about accreditation in standards and all this other stuff, this has to be, especially for tribal schools that are trying to run their own systems, it has to be broad enough so that it includes Federal, State, tribal or local standards with some type of monitoring system set up, if that is what you want with regard to the accountability.

In the second section of the amendment. We have minor problems with uniform physical control and accounting procedures at our meeting in April.

We are going to try to look at a system that might be applicable to all the schools, but you are talking about 60 schools in over 20 different States with different procedures.

I think in light of what has been going on in the last year or so, all this money that contract schools have, I don't know where it is at, I would like to get some.

The main thing that Congress wants is uniform reporting, and not necessarily accounting and physical control locally.

We are required by law and by regulation to do audits at least once every 3 years. We have our appropriate management, all systems set up right now and financially, they are all audited at least once every 3 years. We audit every year, and those are sent to the Bureau, and I don't know what happens to them.

The next thing is just to note in regard to the subsection (g) changes, school closures, I believe, there are two pieces of legislation in Congress now. I think it is S. 1999 and H.R. 4290, which has one statement in there, and I can't remember it, but it says the Secretary of, or the Assistant Secretary of Interior may close a school on a reservation whenever he feels like it, and this subsection (g) outlining all of this stuff should hopefully get rid of that.

In regard to the transfer of what people call other than education functions, contracting, operation and maintenance, in regard to that whole thing, from a management standpoint, that is probably a good thing, one of the best things to do.

The classic examples at St. Francis has been something likely, we have been trying since 1974 to get new facilities and because we were previously private, we were ineligible for so many years, and because we were some other type of school, according to somebody else's definition, and all this other stuff, but when we have to deal with somebody, we have to send out 10 or 15 copies to different people and make sure that all these people get them.

If we followup sending it to the agency superintendent for education and following that line, you never know where it is and so, we never know who is going to get it or not.

When we send out stuff, we have to send it to the agency in the area; central office education people. Then we have to send it to facility engineering people in all of those different areas. Then we have to send it to OCM, which is outside the bureau, and by the time you get all those, plus, if you want to get political, you always send it to Congressmen to keep them happy, and hopefully help us. So you end up with 15 or 20 copies of a document that you should be able to take to one person and say, "Hey, can you do this or not? And what is wrong? Why can't you do it?"

Basically, the transferring of construction, O&M, FI&R, all these other terms, I think from a management standpoint it would improve the whole system.

The next thing has to do with forward funding, and the allotment formula. I think the allotment formula itself is not too bad a system. It needs a few little corrections, but it is not necessarily the formula that is the problem. The problem is the administration, which is not always the OIEP Office, it is usually OMB, the Assistant Secretary's Office, somebody else in the Secretary of Interior's Office, or someplace outside of OIEP. By the time it gets to Congress, there appears to be a lack of support for even a small increase every year, just to cover basic costs.

There never was enough for transportation and a few other things, and then kind of a lack of Congress supporting to any great increases or even small ones. Even if you talk basic inflation of 3 to 5 percent and the schools only get maybe one-tenth of 1 percent

every year, you don't even keep up with inflation, you have to cut staff and do a few other strange things.

In regard to the foreward funding concept, I think we have been pushing this for probably at least 2 or 3 years. I think it is one of the things that we need from a management standpoint. It is hard to plan for this school year when it is almost over, when you don't know what you are going to get when the school is already over.

I think a very simple solution, along with the forward funding and with what is already written in the law, would be to use the fall court of the previous year and send it out to the schools, saying this is what you are going to get, and issue it by January 1 for the next school year, and then stick something in there so that if there is any large increase, some kind of percentage, whatever you guys want to use, but so that they know January 1 how much money they are going to get for the next school year, using the fall count for that, the previous year, the money would already be available through forward funding so that it would get to the schools on July 1, use the fall count that next school year as a final allocation figure.

So that by October, within 2 or 3 weeks after the fall count they would know what they have got, if there are any increases or decreases.

I don't know how you would work it. I think I mentioned in here a hold harmless thing, saying if there are any decreases they shouldn't get punished for it, but if there are any drastic increases we should get something forward. It seems like a pretty easy process to follow, if it outlined that way. Then you would have, for example, $150 million for October, the next school year, and you would have your fall count at the same time and you would know by January 1 how much money you are going to get in the next school year, and you can do your planning.

I am almost positive most schools issue contracts for teachers around April 1, some a little earlier and some a little later. What we have to stick in our contracts, even for teachers that have been there for 5 or 10 years, we want you back, but we don't know if we are going to have the money to get you, that type of thing. It is hard to plan that. It is hard to plan almost anything. You have to cut back and rehire, cut back and rehire every year.

I think you have heard of some of the situations of our having to borrow money at the beginning, anywhere from October through January or February, primarily because of the money not getting to the schools on time.

I think most of the other sections do not apply to contract tribal schools as they are written. If they are stuck in, I would like to know about it. I think a lot of the other sections deal with the procurement, some of the personnel stuff at the Bureau, and most of the other things. As I read it, when it says Bureau school, it means 561 schools, as some people define them, and if it doesn't say anything, it doesn't apply to contract tribal schools at all.

What I would like to do is go through what the bureau presented this morning, their oral testimony plus their written testimony, and also comment a little bit on what has been going on this morning. I think the first thing is if you want to have a good battle, why

don't you stick something in about elementary and secondary education trust responsibility. That is just a thought.

Mr. KILDEE. I personally believe it is a trust responsibility, but there have been some comments, which have been, I think silenced since, that it is not a trust responsibility. My own feeling is anything that would strengthen the Federal moral, legal and treaty responsibility to Indian education I support. The trust responsibility tends to strengthen that moral, legal and treaty responsibilities, so I myself feel it is part of the trust responsibility, but I know there are others over there who at one point did not agree with that, but they have been quiet lately anyway.

Mr. BORDEAUX. I think the elementary and secondary education you might get a little easier than TCC's. Start there and work up, start with first and second grades.

There are a couple of other things. You mentioned this morning trust responsiblity. I think the other main thing that you mentioned when you introduced the hearings was local control. I am a firm believer that the only way any changes are going to be made in the educational institution is to, through local control, based on the needs of the community or the reservation or whatever you want to define as local control, and the policy statement in 561 says that, but the implementation of those policies, as you are well aware, is not always what it is supposed to be.

I was happy that the Bureau agreed with the intent of the legislation. I don't know specifically what intent means, but I think they are moving. They are moving a little slower than a lot of people like, but they are moving to try to improve the system, and often what happens, as I mentioned before, the education decisions within the Bureau are not made by OIEP. I think anybody who works in the field and in other places realizes that. I even think these proposed amendments that they proposed this morning and gave to you guys may not have been reviewed by OIEP office.

I think maybe if you asked them that, you might—I don't know what kind of response you would get but a lot of that stuff that happens, usually it is done by legislative liaison staff, OMB, the Assistant Secretary's Office, and I don't think OIEP has too much input. It might be because they have had 24 different actors in the last 10 years or something like that. It is the same process. Education people who are trained to run education programs have to be the ones who have the authority, and also have the responsibility.

There are a couple of other things in my written testimony that I would like to comment on. The section on declining contracts, the thing that is written in there, it says, by allowing the Secretary for contracts for new schools where schools are inadequately served by the Bureau or public schools, where public service is not available, they kind of give you reasons why they shouldn't contract.

If there is a Bureau system locally and the people want to contract it, or if there is a public facility locally and the people want to contract it, the Bureau is recommending that they shouldn't be allowed to do it. I don't know the reasoning behind it. I think some of it has to do with application of services and all of this other stuff, but the services have to be provided. It is the responsibility of the Federal Government to provide them.

Finally, you are probably going to put up a little bit less money by contracting because you are going to have to put out 874 and a lot of other funds anyway, and the contracting is just a vehicle where you can get true local control, as far as I can tell.

The comment about the Appropriations Committee concerns regarding the proper use of funds for programs, I think those of us that have reviewed that report more than 10 times realize that there were some inequities in the report. We welcomed the report because it brought up a lot of issues for us, and some of the stuff that is in H.R. 5190 because of the Appropriations Committee language, but the report itself I think, in regard to the funding of the schools on an average getting whatever it was, $5,000 or $6,000 is not entirely true.

Some of us may be getting that, but we had to hustle for $3,000 or $4,000 of it. We are only getting probably between $2,000 and $2,300 for basic instruction, and the rest you have to go out and hustle for. You have to use supplemental funds to run basic programs. Otherwise you can't survive.

The consultation thing I think you have heard more than enough about. Everybody has problems with consultation, and defining consultation. The main thing is if they want to come and close St. Francis they had better make sure they talk to our school board and the parents about it.

The section regarding attendance boundaries and some of this other stuff, it is kind of self-defeating the purpose when you put in a requirement that—it says it would provide attendance money for Bureau and contract schools within a mile and a half, if a public school doesn't run buses, or within 20 miles if they do run buses. That just doesn't swing.

We have an elementary system that is 9 miles away. Supposedly that automatically cuts out the elementary program, and our local public school is about 25 miles away, so we lucked out and made it by 5 miles, I guess. So we don't have to shut the high school, but we will have to shut down the elementary. Things like that, I don't know who ends up writing a lot of this stuff, but people don't realize what is going on locally and who is doing the decisionmaking back there instead of some places, as long as that stays up there.

In regard to the thing about duplication of services, I can't remember ever seeing any data about the Bureau providing duplicate services for public schools or any other type of school systems. I don't think that that is anyplace.

I think a classic example of the comment I made earlier about funding of schools is the Alaska transfer that is taking place, and that will be completed in a couple of years. I don't think the Federal Government is going to save themselves any money by doing that. They will probably end up spending a heck of a lot more, not only because of the transferring, and you have to fix up all the facilities, but down the line you are going to have to pump in a lot of transfer money and whatever else the State wants probably, but in the long run I think the students are going to be losing out up there.

In regard to OIEP director, I wish they would hire somebody and give him a 5-year contract and let him go at it, give him a free

wing, even if he makes a mistake. We have got to have somebody there to open the door every once in a while, I guess.

Just a couple of other things. They say that the Office of Indian Education Programs has control over personnel and hiring and fund allocation and self-determination contracts and all this stuff. When I send my contract to the Bureau, it goes to the agency superintendent for education, and I think even before he sends it to the area education office, it ends up in contracting before it ends up in education. The Education Office does review it and signs off on it, but they don't have too much to say about the contents of Part 100, which is basically what our requirements are locally.

I think the contention that the Bureau has that by consolidating all of these programs under the Department of Education or Indian Education will be inconsistent with the Government's thrust to streamline duplication of administrative costs, I think if you look at that, if you stuck everything under one system, you could probably save money rather than trying to add more money to it. The Bureau says that they want to consolidate and save money here and there, and now they want to keep everything apart, and I can't understand if they are trying to save money or trying to save jobs.

Regarding formula, they say that they need more time. The schools themselves don't need any more time. They need some action now, and I think hopefully it will happen with fiscal year 1985. I don't think there is anything else in the Bureau statements that bother me too much. I will stop now and let somebody else talk for a while. You may have questions later.

Mr. KILDEE. Thank you very much for your testimony.

[Prepared statement of Roger Bordeaux follows:]

PREPARED STATEMENT OF ROGER BORDEAUX, PRESIDENT, ASSOCIATION OF CONTRACT TRIBAL SCHOOLS, ST. FRANCIS, SOUTH DAKOTA

My name is Roger Bordeaux. I am the Executive Director of Sicangu Oyate Ho, Inc., a tribally chartered, non-profit organization of parents, which contracts with the Bureau of Indian Affairs to provide basic education services for 400 Rosebud Sioux Indian students. I am representing the Association of Contract Tribal Schools, a national organization to provide advocacy, training, technical assistance and service to its members, to other tribal schools and communities that want to exercise their rights of self-determination.

Since 1794—that's 190 years—the U.S. Government has provided education to Native Americans in exchange for Indian land. The Congress has legislatively continued a federal trust responsibility, including Public Law 93-638 and Public Law 95-561, and federal courts have upheld this position throughout the years.

Public Law 95-561 (Title XI, Part B) was intended to equalize funds to BIA and contract schools, to formulate education and dormitory standards, and to set mandates in order to deliver better education services in BIA-funded schools.

Section 1130 was the important part of 95-561. This section reinforced a policy of local control for all matters relating to education. Now, H.R. 5190 will continue to insure local control, if a few changes are incorporated into the 1984 amendment. The changes we recommend are the reason for this testimony.

Overall, the 1984 amendments will help the delivery of services to Native American students, but some questions have been raised by some tribal schools after review of H.R. 5190. I would like to review it section by section.

SECTION 2 (AMENDMENTS TO SECTION 1121)

(1) Why are standards for contract schools restricted to accreditation only by an accrediting agency recognized by the Secretary of Education or the State in which a contract school is operating?

Following Section 1130 of 95-561, it would be better to allow Federal, State, Tribal or Community education standards to be adopted, and then to mandate a monitoring system for compliance by the selected accrediting agency.

(2) Why do all contract schools have to establish uniform fiscal control and accounting procedures comparable to those used by BIA schools?

Following Section 1130 of Public Law 95-561 Title XI, it would be better to require only a uniform financial reporting system and to leave fiscal control and accounting to local control through adoption of accountability systems.

AMENDMENTS TO SECTION 1121

The insertion of subsection (g) will continue the federal government's responsibility for Indian education and put a stop to dangerous legislation that would authorize the Assistant Secretary of the Interior to close schools at his discretion, such as proposed S. 1999 and H.R. 4290.

AMENDMENTS TO SECTION 1129

From a management standpoint, this is the best change to 95-561 because all school operations would be placed under the BIA education office. But does the Office of Indian Education Programs have the capability now? I would be more feasible to allow OIEP the time to accomplish this or to phase it in by function.

AMENDMENTS TO SECTION 1128

The allotment formula itself is not necessarily the problem. It's a refusal of the federal government and a lack of Congressional support to fund adequately the basic education services to Native Americans based on local needs.

Administrative costs must be equal to at least what the Secretary would expend and be increased in proportion to increased administrative functions.

AMENDMENTS TO SECTION 1129

The forward funding concept is good. But why not change the budget year for BIA education functions, including operation and maintenance, administrative costs, etc. to start July 1 annually. This would coincide with the school year.

Why not use the Fall count to make these funds available for the upcoming school year. A reasonable planning figure needs to be known by January 1 for the next school year. The total amount would then be allocated on July 1 based on the previous Fall count with a hold harmless clause to protect any decrease in student counts. Increases in student counts should be considered.

AMENDMENTS TO SECTION 1124, 1129, 1132, AND NEW SECTION 1140

They do not and should not apply to contract schools.

AMENDMENTS TO SECTION 1136

They would be in line with P.L. 93-638 requirements for contract schools.

In closing, I would like to remind the Congress of some previous federal positions in regard to federal responsibility to educate Native Americans:

1. For nearly 200 years, the federal government through treaties, laws, and court decisions has accepted this responsibility.

2. The most recent pieces of legislation, P.L. 93-638 and P.L. 95-561, improved the delivery of education services under this responsibility.

(A) Public Law 93-638 Policy Statements

The Congress "recognizes the obligation of the United States for self determination" "declares its commitment to . . . (its) unique and continuing relationship with and responsibility to the Indian people," recognizes that "parental and community control of the education process is of critical importance," and "declares that a major national goal of the United States is to provide the quantity and quality of the education services" to Native Americans.

(B) Public Law 95-561 Statement

The Congress declares: "It shall be the policy of the Bureau, in carrying out its functions of the Bureau, to facilitate Indian control of Indian affairs in all matters relating to education services."

In my view, H.R. 5190 will improve the delivery of education services to Native American students. The Federal Government's trust responsibility for Indian education will continue as long as there is one Native American person alive to remind the U.S. Government that they took millions of acres of land from tribal peoples in exchange for education of their children.

Mr. KILDEE. The next witness.

STATEMENT OF BOBO DEAN, ESQ., ATTORNEY FOR ROCK POINT COMMUNITY SCHOOL

Mr. DEAN. Mr. Chairman, my name is Bobo Dean. I represent the Rock Point Navajo School Board. Mr. Ben Barney, the executive director of the board, had hoped to be here today but he has an illness in his family and has designated Mr. Wayne Holm, the associate director of the Rock Point Community School to represent him.

The school board has asked me to comment very briefly on several legal issues, and I will then ask Mr. Holm to discuss an issue of great importance to the school board, the question of the academic standards, from the educational point of view.

The two areas which concern the school board most in the bill from a point of view of asking for changes, perhaps I should say first that the school board does very much support the forward funding concept, and many other provisions of the bill, and I am going to limit my testimony to commenting only on those things as to which we still have questions.

Under existing law, since the Rock Point School is operated by the board under a contract under public Law 93-638, the bureau may refuse to contract. It may either decline to contract or cancel the school board's contract, but if it does so, it has to give the school board a hearing, an appeal, and hearing, and at the hearing, the issue is whether what the school board either is doing or is proposing to do violates the statutory declination standards that are stated in Public Law 93-638.

The most central and relevant standard would be whether what they propose to do is detrimental to the children, so that a Rock Point or any other 638 contract school has a right to a formal hearing to assert its position, and to an essentially independent determination by an appeals board as to whether the Bureau is justified in either refusing to contract because the nature of the curriculum or program proposed by the board would be detrimental to the children, or something that the school is doing in the operation of its contract is detrimental.

As we understand the existing law, the 1978 legislation, Public Law 561, does not change that. By making the academic standards applicable to contract schools only if they request that they should be, the school's rights under Public Law 93-638 are not affected. If they request assistance in implementing the standards, the Bureau should insist, but the Bureau may not decline to contract with the school solely because it is not meeting the academic standards promulgated under 561.

As we understand the amendment, that would be changed, and subject to the specific provisions in the bill which require either compliance with BIA standards or accreditation, if those principles were not met by a 638 contract school board within the prescribed

time period, the Bureau, I gather, would be able to decline based simply on the fact that you have not met the standards.

The concern that the school board has is that it is clearly here losing an important right to be able to say to the Bureau before an impartial board, "This standard that you are seeking to impose upon us is not beneficial to the children; what we are proposing to do is beneficial to the children," and to have that issue addressed on appeal in a substantive way.

What concerns us is that the bill may lead to the situation in which all the Bureau has to do to prevail in such appeal is to say, "You have not met standard X, Y, or Z, and therefore we have the right to cancel your contract."

There is, the school board feels, a need to modify the bill so as to allow the 638 rights of contract schools to continue. Beyond that, or as an additional point, I think it should be recognized that, as amended by the bill, section 1124(f) would not permit personnel, (I assume this means Bureau personnel), to be penalized when there is a failure to meet the standards because of inadequate resources, but that provision has not comparable language with respect to contract schools, so that it would appear to be the case that a contract school might be canceled for failure to meet the standards, even if there were not adequate resources to meet the standards.

That, I think, is an independent point, which the committee may want to consider clarifying.

Mr. KILDEE. I appreciate your bringing that point to our attention. That is something we will look into.

Mr. DEAN. Third, as to the standards themselves, the Bureau academic standards have been proposed. The period for comment has run. At the time that the comments were solicited, the act provided, as we understood it, that the standards applied to contract schools only on their request. It may therefore be that contract schools have not reviewed the proposed standard with the care that they would have if they had known that these standards were to be applicable to them as provided in the bill, so I would also suggest that you may want to consider requiring the Bureau to provide an additional notice period.

I understand that the standards have gone to the Office of Management and Budget for clearance, and are, therefore, on the verge of actually being promulgated, and it may well be that contract schools, if indeed this legislation is going to make the standards applicable to their operations, would want to have additional comments on them.

Finally on that point, I would like to support the suggestion made by the Association of Contract Tribal Schools that tribal accreditation be included as an alternative, tribal standards or tribal accreditation. For the Rock Point School, the issue that has been a central one in its history was finally resolved.

The Bureau wished it to meet State standards on a particular point of personnel standards, which the school board felt would essentially destroy its innovative educational program. The resolution or compromise to that issue was the promulgation by the Navajo Tribe of a standard which the Bureau accepted as appropriate and which the school board has followed. That change in the

bill would, I think, substantially alleviate the concerns that the school board has on that point.

The other area that the board has asked me to comment on is the language in the bill which provides a direction to the bureau as to the payment of overhead costs.

> The Secretary shall provide to all contract schools an amount for administrative and indirect costs which is at least equal to the amount which would be expended by the Secretary if such school were directly operated by the Secretary.

That language corresponds to some degree with somewhat similar language in Public Law 93-638, and I think the committee is to be commended for proposing the language, Congressman Kildee is to be commended for proposing language which recognizes the need for funding over and above the ISEP funds in the case of a contract school. Otherwise the costs of contracting, as you recognize, will reduce the amount of money available to educate the children, and the effect of these reforms will be to discourage an Indian community from taking over and operating its own school.

I have submitted a written statement which goes into this issue in greater detail, and some suggested changes in the language which seem to us to be necessary to clarify Congress intent as to this funding level. I will just mention that one of the areas that the present language in the bill does not seem to cover are those costs which the Bureau does not incur at all.

For example, liability insurance, but which an Indian tribal contractor or school board contractor both is required to incur by the BIA regulations under Public Law 93-638, and prudently should incur. Since the Government is a self-insurer, the Government does not incur those costs, but clearly the Rock Point Community School Board should not expose itself to possibly very large liability due to death or personal property damage.

In addition, we feel that the Bureau's implementation and even more seriously its proposed changes in the payment of determination and payment of overhead costs present very serious problems for contract schools as well as for other tribes contracting under 93-638.

As my written statement indicates, we recognize that the House Interior and Insular Affairs Committee essentially has jurisdiction with respect to Public Law 93-638. We have provided some suggested language to the staff of that committee, and would ask that your committee and the House Interior Committee give consideration to addressing this problem jointly rather than taking more of Mr. Holm's time, I will not go further into the details of the indirect cost issue, but would be happy to answer questions.

Mr. KILDEE. I serve on both of those committees. I will make sure a good dialog takes place. Thank you, Mr. Dean.

[Prepared statement of S. Bobo Dean follows:]

PREPARED STATEMENT OF S. BOBO DEAN, ESQ., ATTORNEY FOR ROCK POINT COMMUNITY SCHOOL BOARD

Mr. Chairman, my name is S. Bobo Dean. I am a partner in the law firm of Hobbs, Straus, Dean & Wilder of Washington, D.C. I represent the Rock Point Community School Board, a tribal school board organized under Title X of the Navajo Tribal Code which has operated an elementary and secondary school on the Navajo Reservation since 1972. I am accompanied by Mr. Barney, the Executive Director of the School. The School Board supports the forwarding funding arrangement provid-

ed for in H.R. 5190. This change will greatly assist Indian schools in operating effectively and efficiently.

There are however, two aspects of the bill which cause grave concern. One of these is the imposition of Bureau of Indian Affairs academic standards on the contract schools. This represents a major change from existing law. Mr. Barney will address that issue in his testimony. The other is the issue of overhead costs on Public Law 93-638 school contracts.

The Bureau of Indian Affairs is proceeding with plans announced in January 1984 to change the procedures for the negotiation and payment of administrative overhead costs of contracts awarded under Public Law 93-638 in F.Y. 1985. Since the enactment of Public Law 93-638 in F.Y. 1985. Since the enactment of Public Law 93-638. the Bureau has recognized an obligation to provide legitimate overhead costs on 638 contracts as an addition to the BIA program funds being contracted. The Congress has repeatedly confirmed this Bureau interpretation of section 106(h) of Public Law 93-638 by appropriating supplemental funds to meet this obligation.

While the details of the new Bureau plan have not yet been revealed to tribal representatives, its gist is to provide a one-time addition to overhead funding at the commencement of a 638 contract and to limit the Bureau's obligation to the recurring level of direct and indirect costs, without regard to any increase in the need for administrative support for 638 contracted programs. Thus, overhead increases in future years might eat into the funds available for direct services.

I am providing a proposed amendment to Section 5.(b) of the bill which would reinforce the Congressional intention (which we already find in Section 106(h) of Public Law 93-638) that an Indian tribe should not be compelled to pay a financial penalty for contracting by being forced to divert program funds to overhead costs, either in the initial year of contracting or in subsequent year this amendment would add a new paragraph(3) to 25 U.S.C. Section 1128(c).

The amendment would also define overhead costs to include (a) costs for support to a contracted program from levels in the Bureau higher than the contracted program (i.e., Agency, Area or Central Office); and (b) costs for activities which the Bureau does not perform but which a 638 contractor is required to perform (obtaining legal advice—which the Bureau obtains from the Interior Solicitor—or purchasing insurance or accounting services). The amount of overhead would be determined in negotiations based on reasonable need and not by formula. This is essential in view of the wide variety in the size of tribal contracts and other factors which affect the need for overhead funds.

I have also provided this proposed amendment to the House Committee on Interior and Insular Affairs. The clarification of the Congressional directive as to funding levels of contracts under Public Law 93-638 will assist in preventing the Bureau from altering the present system to eliminate the 638 contractors' entitlement to sufficient overhead funds to prevent the diversion of program funds to pay overhead costs. Since the new Bureau approach is a serious problem for 638 contractors in non-education activities as well as for schools, we urge that your Committee work closely with the Interior Committee to alleviate this problem.

Attachment.

AMENDMENT TO H.R. 5190 REGARDING ADMINISTRATIVE COSTS

Section 5(b) of H.R. 5190 proposes to add two new paragraphs to 25 U.S.C. Section 1128(c). This section of the bill should be amended to change the new paragraph (3) of Section 1128(c).

On page 10, strike lines 21 through 25, and on page 11, strike lines 1 through 3, and insert in lieu thereof the following:

" '(3) The Secretary shall provide to all contract schools an amount for administrative and indirect costs which includes overhead costs negotiated on an annual basis including:

'(i) costs for activities in support of the contract program normally provided by the appropriate secretary to programs under his direct operation from resources additional to those under contract, and

'(ii) costs of compliance with contract requirements which do not apply to programs under the direct operation of the Secretary. The Secretary shall establish such amount in annual negotiations with each contractor based upon reasonableness of cost and considering such relevent factors as the size of the contract program and the location of the contractor.

The Secretary shall take such actions as are necessary to provide contract schools with the full amount as determined by this paragraph without reducing funds available under subsection (a) of this section' ."

Mr. KILDEE. Mr. Holm.

STATEMENT OF WAYNE HOLM, ASSISTANT DIRECTOR, ACADEMIC, ROCK POINT COMMUNITY SCHOOL, CHINLE, ARIZ.

Mr. HOLM. For those of you who know Benjamin Barney, I am obviously not Benjamin Barney. I am Wayne Holm, Assistant Director, Academic, for Rock Point.

As Mr. Dean has suggested, there are a number of features that we find very commendable in this bill, and we would like to thank you and members of the committee for having advocated these. Since we have such a limited amount of time, of course, we have to express our concern about some of the ones that we are not so strongly in favor of.

There are three areas that I would have liked to have talked about, one of them having to do with boundaries, another one to do with formula, and a third one to do with standards, but because of lack of time, I would like to address only the one on standards.

Very briefly, we are concerned about the material in section E that we see as a limitation upon the role of tribes in proposing alternative standards. We find problems in (c)(2)(a) on the uniform fiscal standards and as our Director of Administration would point out, our fiscal system is approved by the Inspector General's Office. On a 3-point scale we have a 1 rating. That of the Bureau of Indian Affairs has been in serious trouble with the GAO for a number of years, and we would ask, are these standards we are supposed to go down to meet?

We see problems, as Bobo alluded to earlier, that section D protects bureau employees from prosecution for failure to meet standards, but it would appear to us that this is still either a cancellation or declination issue for contract schools, something that concerns us.

Lastly, the point I would like to spend what little time we do have on is the motion of academic standards for contract schools. Rock Point went contract in 1972, before there was a Public Law 93-638, and when we went into contract, we were dealing with contracting officers who were used to buying roads, building, and toilet paper by the case, and they were very upset by our lack of blueprints and our lack of specifications. They said, "Why aren't your teachers certified? Why isn't your school accredited? Why aren't you using the State curriculum?"

We proposed, and it has been followed since, that we would say since the purpose of education is what comes out, not what goes in, that we would say that our students would do as well or better on a standardized achievement test of their choice as the children in the bureau schools. We have done this for the last 11 years, and I am quite sure that we will do so again. I don't think the details are all that interesting.

In 1981, the State of Arizona mandated statewide testing with standardized achievement tests, and interestingly enough they began publishing these results, so in 1983, out of curiosity, we gave the same test at the same time, and we have recently completed an analysis of those test results. One group that we compared with I will show you is in red, and public school district in which we are

located. This is not a comparable group, because it does include some Anglo students, and certainly because of the fact that it is located in an emerging reservation town, and is along the highway, includes children that speak more English than our students do.

A second group that we compared our students with were the all-Arizona Navajos. This is a large group that would include all Navajos living on and off reservation who claim Navajo as the primary language of the home. This probably is the group to which our students would be most comparable because we claim 90 to 95 percent of our kids are primary dominant or monolingual in Navajo.

A third group that we compared them with were the scores for all Arizona Indians. This is not a comparable group, because a large number of these are not Navajos. This would include both urban and rural Indians, and would include many for whom English is in many cases the only language.

The last scores that are shown are those for Rock Point, which would be a 450-people school, K through 12. It would be well into the interior of the reservation, 100 miles or more to the closest town where English is really used. It is a community that is pure by Navajo standard, and probably no more than 5 to 10 percent, however you count it, of the students can be considered to be English dominant, much less English monolingual.

The elementary scores don't show all those differences. The secondary scores show some rather surprising differences. The red is the public school district in each area where we are located. The black would be the all-Navajo by language.This black would be all Indians in Arizona. The green is Rock Point. This is the 7th, 8th, 9th, 10th, 11th to 12th grades.

By eighth grade, the Rock Point students are doing better than the kids in the adjacent public school and for all Navajo speakers in Arizona. By 11th grade they are doing better than all Indians in Arizona. For what is known as grammar, basically it is an English language score, again the situation is that by eighth grade the Rock Point students are doing better than the public school around them, and all Navajo students in the area. By ninth grade they are outperforming the Arizona Indians and all Arizona Indians, regardless of language.

For mathematics, at the 8th grade the Rock Point students are outperforming the public school district in which they are located. All Navajos in Arizona by language, and all Indians in Arizona. A detail of that for 9th, 10th, 11th, and 12th grade shows the five or six public school districts that are located on the Navajo Reservation for 9th, 10th, 11th, and 12th grades. The Rock Point students are outperforming at 9th, 10th, 11th and 12th grades. Every public school district in Arizona that is located entirely on the Navajo reservation.

The important point on this is that these public schools have all certified teachers. Most, if not all, of these teachers, most of these schools are certified or accredited. Most of the teachers at Rock Point are Navajo. All but two in the elementary are Navajo, the majority in the secondary are Navajo.

MANY NOW HAVE DEGREES

The ones who do not have degrees are working toward degrees. A relatively small percentage of them are State certified, and given the difficulty that Navajo teachers have been having with the teacher proficiency test in Arizona, the likelihood of a number of these teachers becoming certified in the near future is not too optimistic.

When we talk about standards, then, I guess we have a certain amount of confusion, because when we look at standards, we say: Are these the standards we should be going down to, or are these the standards that we should be going down to?

Seriously, the imposition of BIA standards on a school like Rock Point would mean the removal of a number of our most effective teachers, and as a result the only result that can follow is a lowering of the academic achievement of students. We feel very seriously that there has simply got to be another way.

Looking at this in a little bit longer range, we are somewhat concerned about what appear to us to be implicit assumptions in these amendments. They may be unconscious, but they are still very strong. One is that there is some sort of mystery in standards, in standardization that a piece of paper in the school superintendent's office that says standards, a piece of paper in the principal's office that says accredited, a piece of paper on the teacher's wall that says certified, somehow mystically, magically makes students learn more.

We are not opposed to standards, but I think there is a great deal of research in the last 20 years that shows that there are real limits to the kinds of standards that can be imposed from Washington, and that the real standards that do make a difference in school, as the Brookover study that was done in your home State shows, are those standards that do emerge from the community and from the school.

A second concern we have is the implicit assumption that public schools are somehow doing an excellent job of educating American Indian students, and that all the BIA and the contract schools have to do is to emulate them, and neither one of these statements in its simple form is true.

We see from our perspective, and perhaps it is a unique perspective, that Public Law 93-639, with all its compromises, first recognized that American Indian education was in a deplorable situation. It still is. There are good schools, there are good teachers, there are good kids, but the situation is not all that different.

But, second, 638 was an act of faith on the American Congress that said that there are limits on what can be done for Indians, that we have got to have faith in what Indians can do for themselves, by themselves, for their own children. There was an acceptance that parents will not knowingly use bad education for their kids, and that if they do so unknowingly, that they are capable of learning from their experience.

We see 561 as a strong and good attempt to try to make accessible to bureau schools, to reform Bureau schools, to make some of the benefits of community control accessible to them. Unfortunately, we feel that in the process of writing the regulations for 561,

and in the implementation of 561, this process has been subverted, and we feel that those amendments which would then attempt to make contract schools like the Bureau schools that are trying to be like the public schools that have not succeeded as a repudiation of the promise, the dream, the hope that 638 offered Indian communities.

I guess what we are doing today, is begging the committee to keep the faith in Indian parents, in Indian communities. We feel very strongly that the methods are there in 638, which will require communities or tribes to state the standards, the objectives, the goals for their students, that the procedures are there in the monitoring of 638 to see that this either is done or that this is not done, and that the attempt to make contract schools with the best of intentions like Bureau schools, like public schools, is only doomed to failure.

Thank you.

[Statement presented by Wayne Holm follows:]

ROCK POINT COMMUNITY SCHOOL
(via) CHINLE, AZ 86503
PHONE (602) 659 4224

April 5, 1984

AUTHORIZATION

The Rock Point Community School Board, incorporated as Rock Point School, Inc. hereby authorizes the submission of the attached comments to the U.S. House of Representatives, Committee on Education and Labor, in regards to proposed changes to the Education Amendments of 1978, PL 95-561.

We have reviewed the concepts of the comments attached and believe that there should be further consultation by the Committee with the Indian groups affected by these proposed changes, and additional time be given for more complete and thorough analysis of the impact of such changes. We agree that there is a need to make some changes in the present statute, and offer the attached for the Committee's consideration. However, due to the short time between the distribution of these proposed changes and the Committee's hearing on them, we fear that a "rushed job" may produce results that will are negative to the improvement of the education potential of Indian students.

The above authorization and attached comments were approved by the Board on this, the 5th day of April, 1984, by a vote of 6 for and 0 against, a quorum being present.

Kim L. Nih, Chairman

Paul J. Jones, Vice-Chairman

Tapaha Begay, Secretary

Frank W. Begay, Member

James M. Begay, Member

Alice P. Wilson, Member

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NUMBER 1

Proposed amendments:

(b)(1) Within fifteen months of the date of enactment of this Act, the Secretary shall propose minimum academic standards for the basic education of Indian children, and shall distribute such proposed standards to the tribes and publish such proposed standards in the Federal Register for the purpose of receiving comments from the tribes and other interested parties. Within eighteen months of the date of enactment of this Act, the Secretary shall establish final standards, distribute such standards to all the tribes and publish such standards in the Federal Register. The Secretary shall revise such standards periodically as necessary. Prior to any revision of such standards, the Secretary shall distribute such proposed revision to all the tribes, and publish such proposed revision in the Federal Register, for the purpose of receiving comments from the tribes and other interested parties.

(2) Such standards shall apply to Bureau schools, and subject to subsection (e), to contract school, and may also serve as a model educational programs for Indian children in public schools. In establishing and revising such standards, the Secretary shall take into account the special needs of Indian students and the support and reinforcement of the specific cultural heritage of each tribe. Such standards shall include a requirement, developed in coordination with Indian tribes, the affected local school boards, and the Indian Health Service of the Department of Health and Human Services, on immunization for childhood diseases, including provisions for in-school, where necessary.

COMMENTS:

We support the proposed language as it appears to be developed in the best interests of Indian students.

CHANGES: None.

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NUMBER 2

Proposed amendment:

(d) A tribal governing body, or the local school board if so designated by the tribal governing body, shall have the local authority to waive, in part or in whole, the standards established under subsections (b) and (c), where such standards are deemed by such body to be inappropriate or ill-conceived, ~~and shall also have the authority to revise standards to take into account the specific needs of the tribe's children.~~ The tribal governing body or designated school board shall thereafter submit to the Secretary a proposal for alternative standards that takes into account the specific needs of the tribe's children. Such revised standards shall be established by the Secretary for good cause and in writing to the affected tribes or local school board, which rejection shall be final and unreviewable.

COMMENTS:

The elimination of key language presently found and the addition of the new language, as noted above, weakens the ability of Tribes to take over the education of their children, as it allows tribes only the authority to propose standards that the Secretary may disapprove. It places Tribes back under the paternalistic policies of the Bureau. However, if the final sentence of §1121(d) were modified as we do below, we believe that sufficient review powers will remain with the Bureau to control any excesses in Tribal initiatives, yet allow administrative remedies for Tribes to counter excesses of the Bureau in their rejecting valid tribal standards.

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CHANGES:

(d) A tribal governing body, or the local school board if so designated by the tribal governing body, shall have the local authority to waive, in part or in whole, the standards established under subsections (b) and (c), where such standards are deemed by such body to be inappropriate or ill-conceived~~, and shall also have the authority to revise standards so take into account the specific needs of the tribe's children.~~ The tribal governing body or designated school board shall thereafter submit to the Secretary alternative standards that take in account the specific needs of the tribe's children. Such alternative standards shall be established by the Secretary unless specifically rejected by the Secretary for good cause and in writing to the affected tribes or local school board, and such rejection shall not be considered discretionary and shall be subject to the review procedures established for Bureau-operated schools, and subject to the review procedures for contract schools established under 25 CFR 271.

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NUMBER 3

Proposed amendment:

(e)(1) The Secretary, through contracting procedures, shall assist school boards of contract schools in the implementation of the standards established under subsection (b) and (c), if the school boards request that such standards, in part or in whole, be implemented. ~~The Secretary shall not refuse to enter into a contract with respect to any contract school on the basis of failure to meet such standards.~~ At the request of a contract school board, the Secretary shall provide alternative or modified standards for the standards established under subsections (b) and (c) to take into account the needs of the Indian children and the contract school.

COMMENTS:

The removal of key language prohibiting the Bureau refusing to use lack of meeting BIA standards weakens the ability of tribes and tribal organizations to develop the processes and the locally adapted standards to meet the local needs. Education, unfortunately, cannot be mandated! It must be developed with the people involved-- parents, families, students, community, and school personnel. The BIA has failed miserably to educate Indian adequately; the public school sector is not any better off. Contract schools appear to be the alternative that may be able to apply the processes to make the difference.

CHANGES: This language should be placed back in again to the statute as we suggest in §1121(f), below.

A technical correction to the paragraph should reflect "or (d)" in the first sentence, as follows:

"... of the standards established under subsection (b),(c), and (d)..."

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NUMBER 4

Proposed amendment:

(2) Within two years of the initial contact for the provision of educational services under Indian Self-Determination and Educational Assistance Act--

(A) each such school shall (i) be in compliance with the standards prescribed under subsection (a), or (ii) have obtained accreditation, or be a candidate for accreditation, with one of the accrediting agencies recognized by the Secretary of Education or the State in which it is found; and

COMMENTS:

We believe two years to be too little to meet the standards, should funding be available to do so in the first place.

Additionally, in order to make the proposed para. (A) correct, in light of our comments, para. (d) and (e) should be included under the compliance requirements.

CHANGE:

(2) Within three years of the passage of this Act or subsequent to an initial contract for the provision of education services under the Indian Self-Determination and Education Assistance Act--

CHANGE:

(A) each such school shall (i) be in compliance with the standards prescribed under subsection (a), (d), or (e), or (ii) have obtained accreditation, or be a candidate for accreditation, with one of the accrediting agencies recognized by the Secretary of Education or the State in which it is found; and

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NUMBER 5

Proposed amendment:

(B) the Bureau shall, through contract with an appropriate national Indian organization, establish uniform fiscal control and fund accounting procedures for all contract schools comparable to those used by Bureau schools.

COMMENTS:

We have reviewed a large number of reports by the Office of the Inspector General, the General Accounting Office, and tribal contractors that have clearly indicated that the BIA's financial management systems are, in blunt terms, a mess! The Bureau cannot keep track of its money, and in the past three years, we have seen two or three alternative cost accounting systems proposed by the Bureau for education that are disasters!! This has been stated by many within and outside of the BIA itself!

We cannot urge the Congress to ask tribal contractors to emulate these messes! The last education cost accounting code system had over 1 million codes to assign costs!

Yet we can appreciate the need for some means to allow the Bureau to utilize contract school financial data to prepare reports for the Congress in an intelligent way.

The proposed language could easily be interpreted as meaning schools should "do it the BIA way," leading contract school boards to the point of merely operating a Bureau school/program. This is not the intent of PL 93-638.

There is little or do data that shows the BIA cannot get useful data from contractor invoices for reporting purposes. All contract financial data and procedures must meet generally acceptable accounting standards and principles (cf. 25 CFR 276.7.) We are certified by the Inspector General and a C.P.A.

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fire to meet all such good financial practices. The BIA's financial systems are not certified or certifiable and GAO has refused to certify them until they meet such standards.

We do not want to be brought down to the level of inaccuracy and irrelevancy that the BIA operates on, unless it gets itself certified first. The BIA does not know where its monies are: we do! And we are certified.

We urge the Congress to reconsider this language and eliminate it, and rather insist that the Bureau clean up its shop and get itself certified by GAO. After that happens, the problem the BIA seems to have with knowing what contractors do with their funds may not exist; or contractors might readily be able to report, under present authorities [cf. 25 CFR 271.49(d)]

CHANGES: Eliminate this para. (B) and consider a requirement five years from now if improvements in the BIA's financial systems does not answer the information needs of the BIA.

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NUMBER 6

Proposed amendment:

(d) § 1121(f) is amended by adding at the end thereof the following: "Failure to implement or meet such standards shall not serve as the basis for taking any personnel action against any individual if (1) the failure is related to inadequate resources (as determined under sections 1128 and 1129 of this title), and (2) the Secretary has not submitted the information required by this subsection and has not requested sufficient funds to cover the cost (as determined under such sections) of meeting such standards at the school concerned."

COMMENT:

The intent of PL 93-638 is to encourage Indian control of Indian education, as reinforced by PL 95-561, §1130.

The BIA has failed to publish appropriate educational standards for its own schools. Elsewhere in PL 95-561 [§1121(b)(2)], the Congress suggests that the BIA standards can be a model for public schools. The OIEP has reversed this intent by emulating public school standards so that the BIA standards will reflect public school education!

The proposed language above indicates that should a BIA school fail to meet standards due to funding limitations, no action can be taken against them. Yet the proposed language places contract schools under the standards. What can the BIA do if a contract school fails to meet standards based on funding limits? The BIA cannot take "personnel actions" against a contractor employee to start with (this side of a breach of federal law.) Is this a basis for declining to contract? This seems very unclear. The language deleted in #2 above should be placed back in here for the protection of contract schools.

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CHANGES:

(d) Failure to implement or meet such standards shall not serve as the basis for taking any personnel action by the Secretary of his delegates against any individual of a Bureau-operated school, nor shall the Secretary refuse to enter into a contract for educational services with a tribe or authorized tribal organization if (1) the failure is related to inadequate resources (as determined under sections 1128 and 1129 of this title), and (2) the Secretary has not submitted the information required by this subsection and has not requested sufficient funds to cover the cost (as determined under such sections) of meeting such standards at the school concerned. The Tribe or designated local school board may set priorities for which standards will be met first under such funding limitations.

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NUMBER 7

Proposed Amendment:

§1121 (g) -- School Closures and Consolidations

COMMENTS:

1. There should be included a statement that in closing schools, such affected students will be placed in schools closest to their family homes. This is an already written policy of the BIA, but it is practiced more "in the breach" than in reality. Legislative support would help.

2. There should be a greater emphasis on Indian control of Indian education, and tribal and community involvement must be increased, per §1130 of the Act.

CHANGES: Paragraph 5 of this subsection should be changed to 6, and the following added as a new para. 5:

(5) It is the policy of the U.S. Congress that Indian students shall be educated in a school closest to the home of the students' family, wherever possible. All transfers will be made in close cooperation of the tribe or tribes affected and the receiving school or schools.

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NUMBER 8

Proposed amendment:

§1124 (a) *** [OK]

(b) *** [OK]

(c) In any case where more than one school operated by the Secretary is located on an Indian reservation, the attendance areas established under this section--

(1) in the case of nonresidential programs, shall not overlap and shall, together, cover the entirety of such reservation;

(2) shall be established after due consideration of relevant transportation costs;

(3) shall, to the greatest extent possible, permit a student to continue his or her education at a single school; and

(4) with respect to dormitory programs, may be established to cover a nonexclusive area, as required by reason of such factors as social or educational need or isolation, or both.

COMMENTS:

1. It appears there is an intent to handle school boundaries of BIA operated schools differently from the ways to handle contract school boundaries. Para. (c)(1) states that BIA funded schools will cover the entire reservation, obvfously overlapping any contract school district. Therefore, the language encourages competition between BIA operated and contracted schools. This is the present reality, and we do not believe it is in anyone's best interest to legislate "bounty hunting" for ISEP students. This language must be modified in order to prevent competition.

2. As elsewhere, there is no direction by the Congress for the BIA to follow and implement its stated policy that students will be encouraged to attend schools nearest their homes. This must become a legislative policy!

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CHANGES:

§1124(a) ***

(b) ***

(c) In any case where more than one school operated by or funded by the Secretary under contract pursuant to PL 93-638 is located on an Indian reservation, the attendance areas established under this section --

(1) *** [OK]

(2) *** [OK]

(3) shall, to the greatest extent possible a student to continue his or her education at ~~a single school~~ the schools closest to his or her family's home; and

(4) with respect to dormitory programs, and programs serving special need populations, may be established to cover . . .

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NUMBER 9

Proposed amendment:

(d) In establishing school attendance areas under this section, the Secretary shall, in the following order--

(1) determine attendance areas for Bureau operated programs with respect to the entire geographic area where potential students reside, considering the factors in subsection (a) and the specific educational needs of the students to be served, taking into account the wishes of the tribal governing body and local school boards concerned;

(2) coordinate such attendance areas with those determined by schools funded under contract with the Bureau;

(3) preserve current or historical service patterns, to the greatest extent possible; and

(4) coordinate such school attendance areas with the school attendance areas of public schools in the vicinity, but such public school attendance areas of public schools in the vicinity, but such public school attendance areas shall not be regarded as exclusive where historical service patterns and current social, educational, or geographic (including transportation) factors show that Indian students will benefit by Bureau programs, taking into account the wishes of the tribal governing body and local school boards concerned.

COMMENTS:

1. We urge the drafters of this bill to always hold in consideration the best interests of students, and insist that decisions be made on that basis.

2. We request that contract schools be dealt with equally and in the same manner that Bureau operated schools are handled. Thus, we recommend the deletion of para. (d)(2), as it is dealt with in our proposed revision #8 above.

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CHANGES:

(d) ***

(1) determine attendance areas for Bureau operated or funded programs with respect to the entire geographic area ...

(2) delete in its entirety

(3) preserve current or historical service patterns, to the greatest extent possible, when it serves the best interest of the student and family; and

(4) Taking into account the wishes of the tribal governing body and local school boards concerned, coordinate such school attendance areas with the school attendance areas of public schools in the vicinity, but such school attendance areas shall not be regarded as exclusive. ~~where historical service patterns and current social, educational, or geographic (including transportation) factors show that Indian students will benefit by Bureau programs, taking into account the wishes of the tribal governing body and local school boards concerned.~~

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NUMBER 10

Proposed amendment:

§ 1124(e) In no case shall the Secretary regard a public school attendance area as being exclusive if the Secretary determines, on the basis of past practices or reasonable evidence concerning future practices, that a local school district is unable or unwilling to provide full and equal service (as provided to all of its students for all activities) throughout the year or to provide programs that meet students' particular needs.

COMMENTS:

1. We recommend that parents continue to have a say and choice on whether or not to send their children to a Bureau operated or contracted school, or to a state public school.

2. We recognize the fact that the public schools do not make the effort to reach students who are remotely located in many Navajo districts, and whose parents still do not want to send them away to a boarding school.

3. The proposed language states that a public school may have an exclusive attendance areas if they meet the needs of all Indian students in that district. This conflicts with the above amendment authorizing the Bureau to cover the entire reservation with exclusive attendance areas!

We recommend the following changes:

CHANGES:

§1124(e) In no case shall the Secretary regard a public school attendance area as being exclusive. Unless the Secretary determines, on the basis of past practices or reasonable evidence concerning future practices, that a local school district is ~~unable and unwilling~~ able and willing to provide full and equal service (as provided to all of its students for all activities) throughout the year or to provide programs that meet students' particular needs, ~~the Secretary~~ shall provide for these students at a Bureau-operated or contracted school.

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NUMBER 11

Proposed amendment:

> §1124(f) With respect to multitribal boarding schools located off reservation, the Secretary shall establish nonexclusive major attendance areas, and shall provide procedures for recognizing and respecting parental choice concerning the special educational or social needs for students residing outside such areas, to the extent consistent with the best interest of the student.

COMMENTS:

The proposed language, although well intentioned, may provide added support to the Bureau for increasing off-reservation boarding schools, by making non-exclusive attendance areas that may encompass all reservation BIA operated and contracted school attendance areas, and thus increasing the likelihood and reality for additional "bounty hunting" by ORBS administrators who need "bodies" to keep their schools open. It has been the intent of Congress to discourage the expansion of ORBS, and we request consideration for the following language changes.

CHANGES:

§1124(f) With respect to multitribal boarding school located off reservation, the Secretary ~~shall establish nonexclusive major attendance areas,~~ and shall provide procedures for recognizing and respecting parental choice concerning the special educational or social needs for students ~~residing outside such areas~~ to the extent consistent with the best interest of the student.

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NUMBER 17

Proposed amendment:

> §1126(b) All contract functions relating to education (including those pursuant to the Indian Self-Determination and Education Assistance Act) shall be supervised and directed by the Director of the Office.

COMMENTS:

1. We are extremely concerned that providing powers to Education line authority may increase the problems for present contract schools, and make it more difficult for present BIA operated schools to "go contract."

2. Several GAO reports have clearly stated that one major obstacle to effective contracting, i.e., self-determination action, is that Bureau line officers are reluctant to contract out a part of their program domain. Presently, we can seek independent review by persons outside of the education line of authority for such contract assistance. Giving Education the power to "cut off fingers and toes" of itself to potential contractors is letting the Education line authority whether or not it wishes to reduce itself. Bureaucracies are bureaucracies, and they tend not to want to do this! The conflict of interest is too great under this proposed amendment. We urge careful re-consideration of this section.

3. We read the intent of the language here to make BIA Education a "Bureau within a Bureau." We would rather see the Congress and the House Education and Labor Committee seek new language and concepts in having contracting removed from within the Bureau itself and placed outside the BIA, but within Interior, so that there can be an increase in objectivity in the contracting process. An independent Contracting Office/PL 93-638 within INTERIOR would

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alleviate many of the grossest instances where the conflict of interest presently found, (and potentially increased with the proposed language) has discouraged contracting.

CHANGES:

New language is needed for a separate non-BIA INTERIOR PL 93-638 Contracts Office to be established.

NUMBER 11

Proposed amendment:

§1126(c)(2) provide all services and support functions for education programs in the areas of procurement, budgeting, and personnel.

COMMENTS:

1. The BIA operated schools are sadly in need of effective educational program coordination, including curriculum coordination. It's sad to see students move from one BIA school to another and receive inconsistent and sometimes conflicting approaches to learning. Present language in the Act at least authorizes curriculum coordination. This should not be deleted.

2. There should be added housing, property and financial services to this paragraph.

CHANGES:

§1126(c)(2) provide all services and support functions for education programs in the areas of procurement, budgeting, curriculum, budgeting, finances, personnel, housing, and property management.

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NUMBER 14

Proposed amendment:

§1126(d) relating to placing Facilities Management under the line authority of Education.

COMMENTS:

1. We support the move to place FM under Education, as long as funding support and expertise is placed with the authority to run the program.

2. We are concerned that the language as proposed may not clearly identify the rights of contract schools who presently contract for FM funds to operate and maintain their schools. We therefore suggest adding one last sentence to the paragraph to clearly identify this right, so that implementing Bureau staff may not read the law to "take back" FM programs presently contracted.

CHANGES:

§1126(d) ***

Nothing in this paragraph will replace or rescind authorities and procedures authorized by 25 CFR 271 for contracted programs.

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NUMBER 15

Proposed amendment:

§1128(E) ***

(F) the costs of boarding arrangements, where determined necessary by a tribal governing body or designated school board; and

(G) Costs associated with greater lengths of service by educational personnel.

COMMENTS:

1. We support the language of subsection (E). But similary provisions in the present Act have not stimulated the BIA to act of revisions to the formula for small schools, contract related costs, etc. We cannot determine what the problem is for OIEP's lack of follow-through. It seems to take tremendous effort to get any adjustments to the formula at all. And such adjustments are usually made by BIA Central Office budget office budget staff with no regard to education. (We understand that Tom Stengel of the BIA Budget office amends the transportation formula each year as he sees fit, with no regard to BIA Education policy or regulations!)

2. We support para. (F), if the intent is to assist the remotest schools with funds for a dorm program when needed due to impassable roads. This is the kind of language we need. We are concerned that ORBS and reservation dormitories may read this language may read this to apply to the, for increase in their already sufficient budgets under the present formula.

3. The costs of "lifers" in the BIA (i.e., non-contract personnel) is a difficult issue. Although Rock Point might "win big" because of low turnover statistics, we would rather not see congressional support for supporting the

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high costs of some few staff at some Bureau schools. Head cooks and bus drivers who make more than teachers, more than junior and senior administrators must be handled differently than reducing funds to some schools so that their salaries can be paid. Presently, a school facing high costs with such "high priced" staff can "go contract" and the local board would be free of the federal obligation. Otherwise, the Congress should simply appropriate more dollars to meet these costs, and not reduce funds at some schools to meet such costs.

4. INTERIOR has stated that it intends to push "OMB Cir. A-76 contracting" of all INTERIOR programs that can go that way. This might be one authorized methods for the Bureau to use to eliminate these costs, i.e., by letting there be a competitive arrangement to see if someone other than the Bureau can lower the costs associated with education by non-governmental contracts.

CHANGES:

(E) ~~***~~ [OK]

(F) the costs of boarding arrangement <u>for day school programs</u>, where determined necessary by a tribal governing body or designated local school board.

(G) delete in its entirety.

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NUMBER 16

Proposed amendment:

§1128(c)(2) ***

(c)(2)(A) ***

(c)(2)(B) shall receive an equal amount as an allowance for local school board training and activities including, any other provision of law notwithstanding, meeting expenses and the cost of membership in or support of organizations engaged in advocacy activities on behalf of Indian education.

COMMENTS:

1. There is a dimensional difference in the actions and responsibilities of a contract school board incorporated and legally responsible for a school, and a BIA advisory school board. They are not equal in role or responsibilities.

2. We question the intent of the last segment of (c)(2)(B) which appears to authorize lobbying. Is this the intent of Congress? We are wary of supporting any legislation that would "pamper" Indian groups, BIA-authorized or affiliated by allowing them to misuse federal funds, by any other name, by any other legislation.

CHANGES:

(c)(2)(B) shall receive and ~~equal~~ adequate amount as an allowance for local school board training and activities, including, ~~any other provision of law notwithstanding, meeting expenses and~~ the cost of membership in or support of organizations engaged in ~~advocacy activities on behalf of Indians~~. regional or national issues relating to Indian education.

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5. A date of Sept. 30 is in conflict with present student count procedures which call for FY counts in October and November. We recommend this be left intact, as some students will not be enrolled in any school by Sept. 30.

CHANGES:

§1129(a)(2)(B) ***

(a)(2)(B)(i) ~~publish~~ issue, on ~~July 15~~ April 1 preceding the fiscal year for which the funds were appropriated, allotments to each affected school made under this section of 85 percent of such appropriation; and

(a)(2)(B)(ii) ~~publish~~ issue, no later than ~~September 30~~ December 30 of such preceding fiscal year, the allotments to be made under this section of the remaining 15 percent of such appropriation, adjusted to reflect actual student attendance.

NUMBER 18

Proposed amendment:

§ 1140 Voluntary services

COMMENTS:

There is no need for a Bureau staff/line officer to approve voluntary services at a contract school. Therefore, it should not even be suggested as someone may think they have such authority now!

CHANGES:

§1140 Notwithstanding section 1342 of title 31, United States Code, an officer of employee of the Bureau or the Office may, subject to the approval of the local school board concerned, accept voluntary services on behalf of Bureau.

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NUMBER 17

Proposed amendment:

§1129(a)(2)(A) ***

(a)(2)(B) The Secretary shall, on the basis of the amount appropriated in accordance with this paragraph---

(i) publish, on July 1 preceding the fiscal year for which the funds are appropriated, allotments to each affected school made under this section of 85 percent of such appropriation; and

(ii) publish, no later than September 30 of such preceding fiscal year, the allotments to be made under this section of the remaining 15 percent of such appropriation, adjusted to reflect actual student attendance.

COMMENTS:

1. We support forward funding.

2. There is confusion in the terms of the legislation: what does "publish an allotment" mean? We believe the term for providing funding authority is "issue an allotment." This would then convey authority for expenditure for the next FY funds prior to the beginning of that FY. Is this the intent? This needs clarification.

3. The deadlines are not realistic, i.e., July 1 and Sept. 30.

(a) presently, by regulation, (25 CFR 39h.31) the Bureau is to notify schools of the next FY allotment by April 15. This hasn't been done in any year except maybe for the first year of ISEP implementation. We cannot even get the same FY final allotment by April 15 of a given year!

4. We do not need to have a final amount by Sept. 30— if it came by December 30, it would be just fine.

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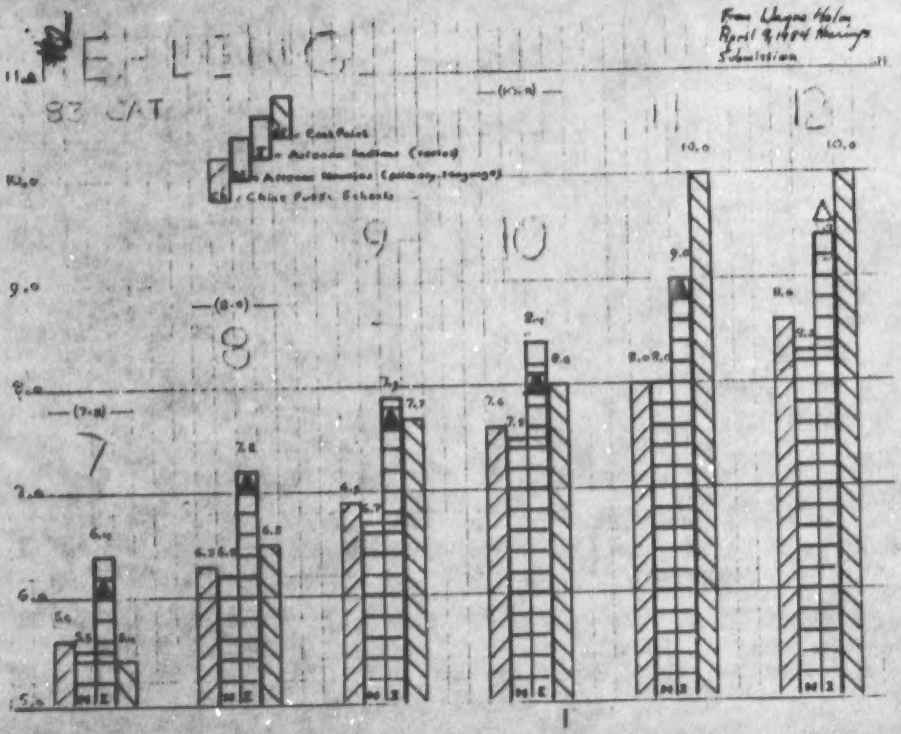
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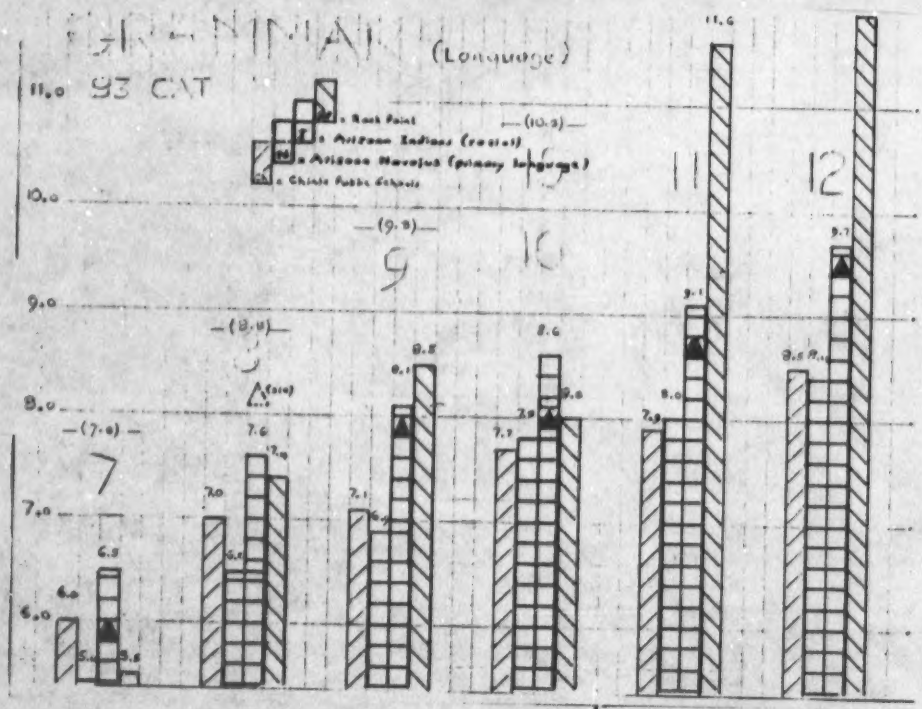

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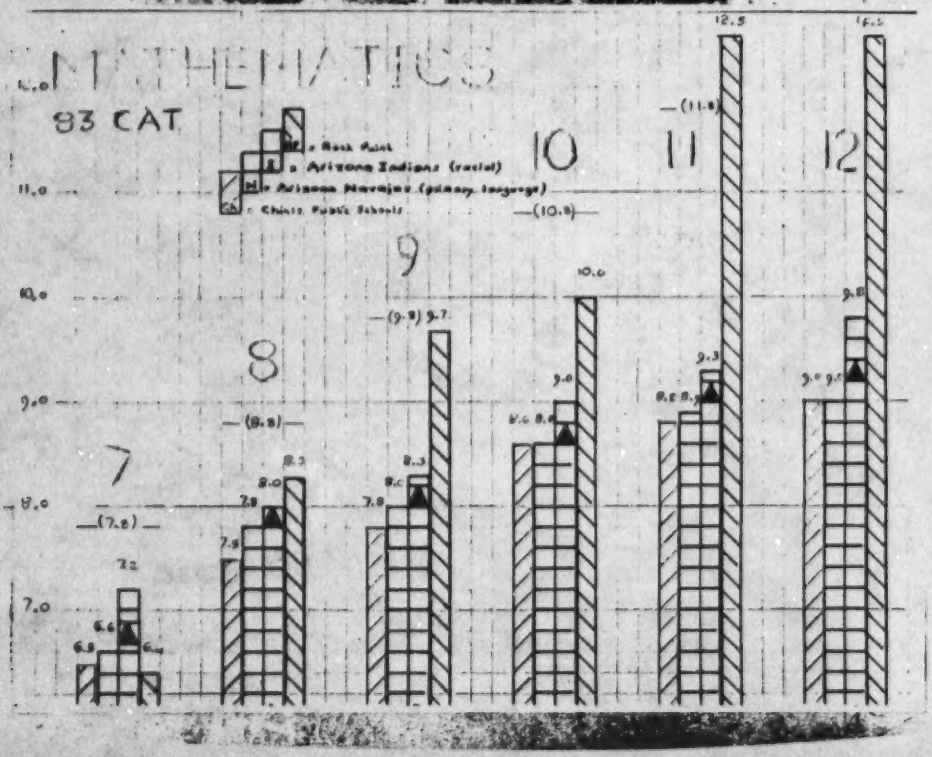

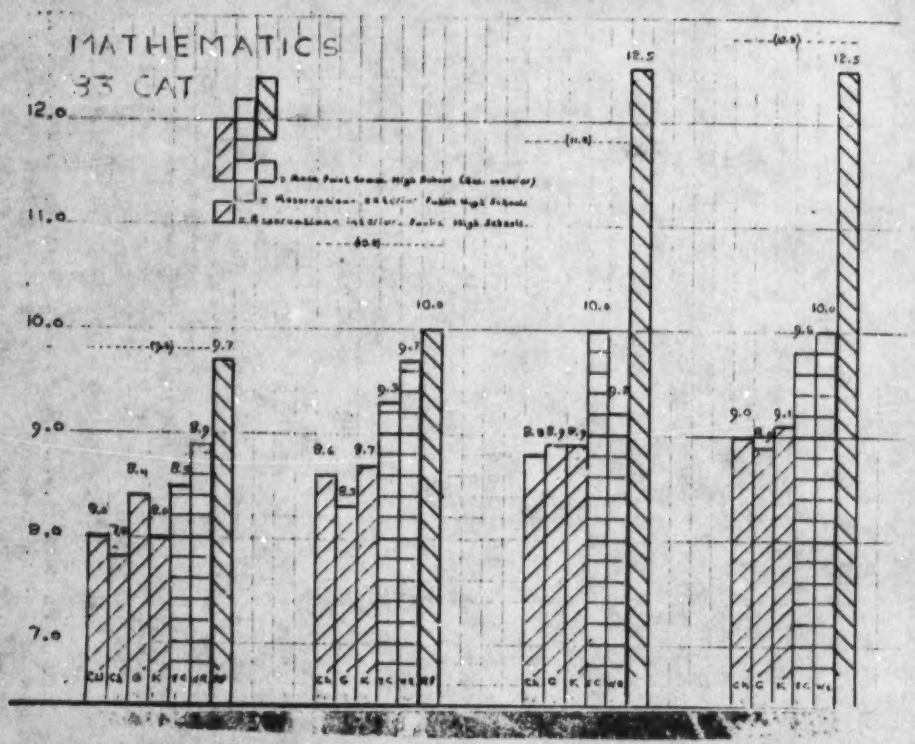

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Mr. KILDEE. Thank you very much, Mr. Holm. Your testimony has been very helpful. You are obviously doing an excellent job in that school, and we certainly want to make sure that any legislation that this Congress passes doesn't interfere with what is obviously very excellent education. We appreciate your testimony here this morning, and want to work with you as we develop this bill.

As to 95-561, I was a cosponsor of this bill. I worked with Mike Blouin and Al Quie. We did strongly tie in with the idea of local control. Contract schools education certainly are ultimate examples of where the local input and the local control is extremely important. We want to continue that philosophy in both those pieces of legislation, because it has worked pretty well. I can recall, going back to 95-561, when that first went into effect, there were a lot of questions on that, but I think it has worked pretty well.

Also the legislation for the contract schools has been a good bit of legislation. We very often do look at the administration of law, and try to see if the administration has not been good or has not been part of the intent of Congress. We have good oversight on that, and try to tighten up on that. But obviously, in doing that, we have to make sure we get input from people like yourselves who are at this table, because you are right out there delivering those services to the BIA schools and delivering those services in the contract schools.

We would be remiss and in error if we didn't really get continuing input on that, so we appreciate the testimony here this morning.

Mr. HOLM. Could I make one further point? I think one of the problems with 561, I may be mistaken, but certainly in following the law at the time, I had the feeling that the intent of the committee and the people who drafted the bill was that BIA school boards were to be empowered in a meaningful sort of way, and I think one of the big things—it may be controversial, it may be difficult to do at this time, but I think if you examine what has happened to this, because of the legal decisions that were made after the law was passed, and because of the regulation process, in most schools BIA boards control only a fraction of the employees at that school.

Once you decided this applied only to academic employees and none of the support services, and once ways were found in the personnel system to weasel people from one school to another so that people could be transferred into a school without that board's decision, it practically emasculated the BIA boards. They have not had the kind of control that I think the committee intended in the law, and I don't know whether it is feasible or not.

It is one of the things I do not see in here. There may be good reasons why there have not been provisions to attempt to try to get 561 to do what it was supposed to do before it was emasculated.

Mr. KILDEE. In our last trip we noted that very thing. We have difficulty putting together the entire solution. We have other committees of Congress that deal with BIA employees, but I certainly concur that there is a real problem because of the lack of control over everyone, for example, in the school building. Some are directly under control of the principal and some are not.

Mr. HOLM. My wife's home community has a 6-teacher school, between 30 and 40 employees, of which two are contract employees that report to the board, after 5 years.

Mr. KILDEE. I have a few questions here. I think the actual questions I had in mind are pretty well addressed in your testimony. Let me ask you this. How do you feel about our concern over how the BIA establishes school boundaries in cooperation with public schools? Would anyone care to address themselves to that?

Mr. HOLM. The one big concern I had about the school boundary issue was the fact that there are a number of factors that were addressed in there, such as current historical patterns, going to single schools. I forgot some of the other, but they were all institutional-type factors. Two of the factors that did not show up at all, that I did not find, were some indication that wherever possible students should attend school in their home area if at all possible. Second, the recognition that kids should attend school on a day basis if possible, and the burden of proof should be put on not doing so.

Secondly, there was recognition of indications by tribal governing bodies and local school boards requests where schools should go, but again I found no mention of the wishes of parents. There is a complex problem in schools, particularly in Bureau, and it may be peculiar to Navajo but I doubt it, and that is that in a given community you have a bureau school, all the kids or the majority of the kids in that community are attending a public school, so that the Bureau school in effect is governed by people who do not have their kids in that school. And one of the really difficult questions of deciding what is a good decision and what is not a good decision on this is: Is it an employment issue or is it an education issue?

Mr. KILDEE. Would anyone else care to speak on this?

Mr. DEAN. Could I just add one comment on the question? It does seem to me that the proposed language on attendance boundaries, for the very reasons that Mr. Holm has mentioned, would in effect mandate a change in certain provisions of the Indian education policies which the department has adopted under Public Law 561. The policies do provide for the education of children on the principle of being as close to home as possible, and do have a provision for parental choice.

I do know that those policies have always been carried out in the field exactly, but they are the official promulgated Indian education policies of the Secretary of the Interior, and it would appear to me that the establishment of the attendance boundaries with respect to the public schools particularly, as provided for in the bill, would appear to dictate a requirement for a modification in those policies, and I think that on those two points that Mr. Holm has mentioned, there would be many Indian people who would support the existing policies, allowing parental choice and a tendency to try to educate the child in its own home community.

Mr. BORDEAUX. Just a couple of short things; 638 itself, a very small policy statement, parental and community control of the Indian education process is of critical importance. That would seem to imply, in regard to attendance boundaries and everything, that the primary concern is parental choice. The other thing is, I think within H.R. 5190, I don't think that the section on attendance boundaries does apply to contract tribal schools, as I see it.

Mr. KILDEE. The Bureau intends to do things on boundaries, and we are trying to make sure there is more input into what they do. I guess we are trying to enhance the principle of local involvement.

Mr. HOLM. Just wishing out loud, you wish there was some way we could get this whole discussion off of boundaries rather than saying that if at all possible schools ought to be based on Indian communities, and you wish that there was some way in which the school system could be combined in such a way that you ended up with the most rational use of schools, day or boarding or whatever is necessary, to put them back into Indian communities.

If you look at it in the 20- or 30-year perspective on Navaho, you would see if we tried to decommunalize the school over the last 20 or 30 years we couldn't have come up with a much better conspiracy than what we blundered into. There really needs to be ways of looking at, and perhaps in some ways the tribes may be the only hopes in many cases in trying to draw these kinds of lines, saying eventually, in the best of all possible words, we should have schools, whatever combination of day or boarding is necessary, to make it possible for kids to attend schools, but schools which the kid can attend in their home community.

We always cry about the kid who buses 25 miles away from home. Nobody seems to cry about the kid who rides 60 miles one way to school every day. One is as bad as the other.

Mr. JACKSON. Mr. Chairman, there are a couple of things I would like to follow up on. One is possibly some conflict here in the language that we have a concern about. That is specifically the phrase "to the extent consistent with the best interests of the student." Based on the philosophy that it is best to educate the child near his home, we don't have any problems with that if it was true that we could find that that has been beneficial in all cases, but in most instances we have parents who are 5 or 10 miles from the school that will never come to the school or have any involvement with their child's educational experience.

So we can see where this phrase could be counterproductive to the language that is hopefully to establish nonexclusive major attendance areas. So we would urge the committee to look at that phrase, because I could see possibly that could be interpreted by OIEP in a very restrictive manner. So I would encourage you to look at that.

Another consideration is, as you look at the testimony, as you hear the testimony, and you have been sensitive, but to be a little bit more informed. Bear in mind in Oklahoma we have over 40-some tribes within that area, and then we have a great deal of Indian population in California. What I am saying is that the off-reservation boarding schools and some of the major populations are in areas that will not use boarding schools in the traditional sense that you might find in the reservation area, and so, therefore, the question becomes, one, what is an off-reservation board school? Is it an alternative educational experience to the public school? It has been for us in our area.

Now, I am not saying that should be for all areas, but where we are dealing with many tribes, and many cultural and traditional backgrounds, it has been our position at least with the board to try to bring those students that come in back to a well-functioning

level, and then back home to their community as quickly as possible, so we are not looking so much at the long-term educational experience, whereas in other areas it may be, which is necessary.

What I am saying is that when you are dealing with a very broad multicultural student body, your needs change, so in looking at the legislation, bear in mind there are some problems.

An example is the ISEP formula. We do have problems with it. We feel like it does need to be changed, because as an off-reservation boarding school, there are some costs that are not picked up that we are having to address each year. The COLA factor of employees doesn't cover that. The uniqueness of the dormitory design or the facilities, if you have a cottage setting, is not nearly as expensive as a dorm, and we have huge dormitories which require more personnel.

Some of the accreditation standards out of North Central require standards that would require more educational personnel. We don't have it within our budget. The ISEP formula does not encourage or reinforce good educational services. What I am saying is that is not in conflict with the needs of some of the reservation schools, but we do have our own unique needs.

Mr. KILDEE. Ms. Kingman.

Ms. KINGMAN. Mr. Chairman, I was just going to say that our boundaries for learning centers take 10 percent out of our area, but we are really only limited by the funding factor and the facilities, because we do have a waiting list of students, and most of the time we end up taking many students on emergency needs, which come to us due to removal from homes where there is abuse, and so in that case we do take them outside of our boundaries, but try to stay within the limits that we have. The only limit I would say is the facilities, and here again the funding which goes back to some of the other areas we addressed.

Mr. KILDEE. As you know, the Bureau is in the process of doing its boundary work right now, and I think the Navaho have it pretty well in place. What we are trying to do I guess is to make sure there is both good Indian education input from the local level into those boundary policy decisions, and also some guidance from this Congress. In that we want your input through this Congress too, so we can make whatever decisions that are made on boundaries respond to your needs, and the needs of Indian education, rather than act as a straitjacket on Indian education. We have before us the Bureau doing some things.

We are trying to make sure that whatever is done is done to serve the needs of the Indians in their educational needs. Your input this morning on those particular things is extremely helpful, because in trying to fashion a remedy, we want to make sure that the remedy is just that, and not something that is going to cause you additional problems out there. I appreciate that.

Let me ask you one final question. I really am concerned about our moral obligations to maintain health and safety standards at our facilities—standards that fit in the educational needs. As I say, I saw some good facilities, and I saw some very bad facilities. What suggestions might you give us so that we bring up to standard, basic standards of health, safety and decency, our facilities, and to

prevent deterioration taking place in the future where we have to go back and say these things are terrible.

Do you have any suggestions in general on what we might do to make sure those standards are brought up and kept up?

Mr. Bordeaux.

Mr. BORDEAUX. I think most people realize standards—I don't like to say this—they are always tied into money. I think in the bureau's budget justification this year, they said something like they had a 35- or 40-percent backlog in FRAI projects. That is pure funding. They know that this stuff has to be done. They don't have enough money to do it so they stick it on a priority list, and depending on the degree of what study you are meeting, whatever it is, you may end up getting part of it done next year and the rest of it done 10 years down the road.

I think one thing that really helped us was hiring somebody, an architectural firm, just to go out and look at all of these facilities. I don't know what they spent on this AT&R study they did in 1983 on the previously private schools, but it took us something to get it at the local level. They presented a three-volume document outlining everything within the system, straight, telling us this water pipe is too big and the other one is too small. You have got a few cracks in the walls here that should be shored up.

This other building is tired, so just tear it down, and things like that. Something like that has got to be comprehensive that the people at the local level get.

Oftentimes studies are done, and it ends up sitting either in Albuquerque or in the District of Columbia and you never see it. I will give you a classic example.

I went down to Albuquerque about 8 weeks ago starting to work on the facilities at St. Francis. I was sitting in the planning office for the Aberdeen area and this guy was talking on the phone. So I looked around at all of his stuff. There is a thing here saying St. Francis Indian School. It had about three or four different studies in it. I kind of pointed at it and he shook his head. I went over and looked at the studies. There was one study in there.

You must understand, first, we have about 400 students at the school. This was one study in there that was done in 1979 or 1980. We had two facilities. One was a 20-by-60 trailer which was converted to classrooms, and the other one was an old 20-by-40 house which was converted to classrooms, and that was the study that was done on St. Francis Indian School. That is what, 2,400 square feet for 400 kids. Try to educate that many kids in those two little rooms. Stuff like that is happening.

I am trying to remember the name of the company that did the study, but that study is there, and somebody could go in there and look at it and take it out and say these guys don't know what is going on, or something like that.

Somebody has to review all of the facilities in regard to health and safety standards, in regard to compliance with handicapped accessibility and all of this other stuff, and then going to Congress, saying, "Hey, we need $650 million to bring these all up, and then it is up to you guys to do whatever you want with that."

Mr. KILDEE. Ms. Kingman.

Ms. KINGMAN. Mr. Chairman, I guess I would have two recommendations, because here again, I am in the middle of a construction renovation project. Supposedly, it was initiated in 1981. I have got pressing emergency needs like emotionally disturbed children that the psychologists told us have to be removed from the dormitory setting into a self-contained environment, but I guess two recommendations would be if we could have the funds ourselves, I think our school board would do what this school board has done, to initiate the study so we ourselves can do the feasibility study and everything, because we have had several studies done on pure Indian learning center, and in a matter of time, they are already obsolete. We have doubled the enrollment and there are a lot of circumstances that have happened since then. That backlog is atrocious.

I guess here again the other recommendation would be if the Bureau or the facilities management would stick to time lines, but there doesn't seem to be any rhyme or reason to bureaucratic regulations on even time lines. They set them and they are never followed.

If this study was done in 1981, and here it is 1984 and nothing has been done, we barely get to the point where our facilities are supposed to be 100 percent complete for construction. Yet then we barely get on the list, the priority list, and then we might still be down to 10th, and they can only fund maybe the top two, and so I guess I wish our school board could, here again, get the funding to do the study and initiate that, and then if the Bureau itself would adhere to time lines. There probably are some better things, but those two would help me immensely.

Mr. KILDEE. Thank you, Ms. Kingman.

Mr. JACKSON. One of the things that came up very strongly in our meeting with the ORB's in Phoenix, this was in November, I believe it was last year timewise, all of the school board members were there. The administration people from the schools were there, and then also the area personnel. The one thing that came up very strongly as to needs, and each one broke off into three groups, and they came back and compared what they defined was the major need within the educational system.

All three groups agreed that they were unaware of what the Bureau's educational goals were, and without that basic guidance of knowing what the educational goals are for the Bureau, and the education department, it is very difficult to decide what standards need to be improved, at what level. Certainly we need some facilities, certainly in the area of academic programing. But when the leadership itself is unable to define what the educational goals are for its services, then that creates confusion at all levels down to the local level, and the local level, who have to implement those programs, and face the reality and the shortages within the community, get confused as to what is going to be appropriate, what changes can we make, what positive changes can we make.

It just transmits through the whole system in a very negative way. I think before you even begin, we need those educational goals defined. Where are we going, and what are we about? Until then, the casualties, unfortunately, are going to be the children. I guess what I am saying is that we have to start back to base zero.

Mr. KILDEE. Ms. Kingman, you mentioned about being put on the priority list, and it takes a good deal of effort and a good deal of need to get on the priority list. But I have seen schools that were on the priority list and then dropped off. They had great hopes and great rejoicing, only to find out that it was an unkept promise, that even the priority list wes not sacred, and to get on there you really had to be in need.

Nevertheless, they were dropped. It does show I think that we do have to put—and this is what we have to work with on the Appropriations Committee, and the entire Congress, to put some more money in, so these physical plant needs can be addressed.

Ms. KINGMAN. If facilities was moved to education, I am in agreement with that, but I hope they don't take with them the same gobbledegook that was there before. I hope they set some new streamlined regulations.

Mr. KILDEE. Thank you, Ms. Kingman. Yes, Mr. Dean.

Mr. DEAN. I would like on behalf of one of our clients, the Micosukee Tribes, which operates a contract school in Florida, to support Ms. Kingman's point of trying to provide the funding for local management by the school or the tribe or contract school board, both for facilities repair and for construction.

With respect to facilities repair, it can be done now under Public Law 93-638, but I think it would be fair to say that the Bureau does not encourage it.

With respect to construction, new construction, the Bureau has carved out an exception to the Bureau Determination Act and provided that Public Law 93-638 does not apply to construction. It seems to me that it was for Congress to decided what that act applied to, and the Congress has never said that it did not apply to construction.

So in both of those areas, I think the Congress should seek to encourge the Bureau to permit, provided the proposals presented are sound and pass the declination criteria, to permit Indian tribes and communities to build their own schools and to make the repairs in their own schools, because the kids who are going to suffer the consequences of bad repair are local, and are the children or the neighbors of the people who would be controlling the project.

And under those circumstances, whereas with all the good will in the world I find it very difficult to believe that the bureau is going to be able to administer this kind of a program nationally to produce the effects that you and the schools want to produce.

Mr. HOLM. I think the situation with the Navajo was really pretty bad there, because what you had was a large population after the Second World War that were out of school. You had a crash program during the fifties and into the sixties to build schools, and it was, frankly, a one-for-one program to build two schools for the price of one, and 20 years or 25 years later we are beginning to pay the prices for the construction that made it possible to build two schools for the price of one.

It would appear at least in a situation as big as Navajo, and my guess is it would be true in Dakotas and possibly Papago, that some sort of demographic planning is going to have to be necessary to try to decide where schools should be upgraded and where they

should not, and attempt to make some long-range estimates of where population is going to be.

What has happened in places, there was a study that surfaced just a couple of years ago where you ended up doing an analysis of the costs of repair at all schools, and the more paranoid of us simply decided in effect that the schools whose roofs were too expensive to be repaired should be closed, and those whose roofs were in fairly good repair should be left open. That doesn't go very far to meeting the needs of the kids, where the kids are.

We do wonder after all these years why it is impossible to build a roof on a Navajo reservation that doesn't leak within the first year, why it is impossible to build a cinderblock wall that will not crack out during the first 3 years. Surely these things must be possible.

In defense of the people here, there have been some good things done in making up for I think 20 years of inadequate funding of repairs. It is not a glamorous thing to do to repair schools, and when you have funds people usually put it into new roads, not repairing the old ones, and building new schools or new buildings.

One other feature that I think could make a great deal of difference is that even those of us in contract facilities management are under the same restriction that bureau work centers are. Anything that costs over $500 for all practical purposes we have to get the approval of the Assistant Secretary of the Interior for Policy and Budget. We can't paint our schools.

We have asked if perhaps we could paint one wall one year and another side next year. That is not allowed. You can't lay a new sidewalk. Sure there are some things that are very difficult and complicated and beyond our ability, but to be unable to paint your own school when you have the people and the ability, that is pretty sad.

Mr. KILDEE. I would agree.

Mr. BORDEAUX. I was just remembering what the gentleman from Oklahoma said about establishing goals. I think it is the Grace Commission that the current administration has been doing some work with, and there are some statements in there that I have seen that could be alarming or could be beneficial, depending on who is reading it, but basically what it says is: When is the Federal Government going to end its responsibility for all of the treaties that we had with the Indian people?

The Federal Government should set a deadline as to when they are going to provide all of these services. The Federal Government should decide what they are going to do or what they are not going to do. I was just thinking, just for the heck of it, you should stick something in H.R. 5190 that says as long as the grass shall grow and the sun shine and all this other stuff.

Mr. HOLM. What makes you think the grass is going to keep growing?

Mr. BORDEAUX. Unless the ozone messes everything up.

Mr. KILDEE. I appreciate the testimony of this panel and all the panels today. As I say, the bill which has been introduced is a starting point. We had input into that, of course, but we need further input. Your input today has been extremely helpful. We will go back and try to incorporate what we can and after subcommittee markup we will still solicit more input.

For that purpose and other purposes, the record for this hearing will remain open for 2 weeks for further submissions and input to this committee. You can contact us formally or informally, written, verbal. We are not wed to any formality that you can't drop by my office and give us some input or ideas that you may have to make sure.

The sole purpose of this bill is to make sure, as I stated in the opening remarks, that the U.S. Government does carry out its moral, legal, and treaty responsibilities to the Indian people, nations, and tribes of this country.

With that, again I want to thank you. This hearing will stand adjourned.

[Whereupon, at 1:20 p.m., the subcommittee adjourned.]

[Material submitted for inclusion in the record follows:]

PREPARED STATEMENT OF THE NATIONAL EDUCATION ASSOCIATION

Mr. Chairman, the National Education Association appreciates this opportunity to make a few brief comments about the Indian education legislation pending before your Committee.

H.R. 11, which would extend a number of important education programs in need of reauthorization, is of immediate and pressing importance. Among the programs reauthorized in this bill are the components of the Indian Education Act, Title IV, of P.L. 92-318, which are found in Sec. 303 of the Indian Elementary and Secondary School Assistance Act, Sec. 422, 423, and 442 of the Indian Education Act, Sec. 1005 of ESEA, and Sec. 316 of the Adult Education Act. The Indian Education Act marked a major federal commitment to the advancement of educational opportunities for American Indian/Alaska Native children and adults. It continues to be significant for this population regardless of tribal affiliation or place of residence. The special educational needs of these individuals must not be ignored.

We recognize that the urgency of moving this legislation is great. Thus this Committee may feel that the need for expeditious action requires deferring major substantive changes to these programs until a more deliberate examination of needed changes can occur. We believe that there are several issues which do merit legislative change and would appreciate the opportunity to address these in some detail at an appropriate time. Meanwhile, however, we have some comments which we believe to be important.

On January 23, 1984, the Department of Education printed proposed rules for the Indian Education Act in the Federal Register. One of our concerns with these regulations is the deletion of the requirement that half of the members of the parent committee be American Indian/Alaska Natives. We believe that this deletion is misguided since the programs funded under this Act should seek to protect and enhance the diverse values and traditions of the American Indian and Alaska Native cultures served by the program. It may be necessary for the Act itself to clarify this objective and highlight its connection to the Indian Self-Determination and Education Assistance Act (P.L. 93-638).

A second point we would make is that grantees should be required to conduct a needs assessment in conjunction with the parent committee, as well as involve the parent committee in monitoring and evaluating activities. The parent committee should also approve the application in writing before it is submitted to the Secretary of Education. These safeguards are necessary to insure that the educational program provided is responsive to the concerns of the American Indian/Alaska Native communities.

This Committee also has before it the Indian Education Amendments of 1984, H.R. 5190, introduced by Representative Kildee. We believe many of the proposals included in that bill are both useful and necessary. Among these are the provisions which specify the procedures that must be followed prior to the closing of any BIA school.

The NEA is also concerned about the current staffing procedures at the Department of Education. There is a serious inadequacy in the staffing of the Office of Indian Education in the Department. Currently there are only three American Indian/Alaska Natives on the staff. In keeping with the intent of the Indian Reorganization Act of 1934, Indian preference should be given in hiring and assignment of such staff to correct this serious inadequacy in program staffing. Not only should we

require that local education programs be responsive to American Indian/Alaska Native concerns, the federal government should set the same example in its own operations.

Mr. Chairman, we thank you for this opportunity to comment on this legislation which the NEA firmly believes is essential to advancing equal opportunity to American Indian/Alaska Native children, youth, and adults. We as a nation have made some progress toward this goal but we unfortunately still have a very long way to go before achieving it.

UTE INDIAN TRIBE,
Fort Duchesne, UT, April 6, 1984.

Congressman HOWARD C. NIELSON,
U.S. House of Representatives,
Longworth House Office Building,
Washington, DC.
Attention: Robert M. Jeppsen, Legislative Assistant.

DEAR CONGRESSMAN NIELSON: Enclosed please find written testimony I would like submitted to the House Committee on Education and Labor concerning H.R. 5190 the Indian Education Amendments of 1984 Act and the Title VII Bilingual Education Act.

Thank you for your consideration and help concerning this request.

Sincerely,

FORREST S. CUCH,
Education Division Head.

WRITTEN TESTIMONY

OF

UTE INDIAN TRIBE

UINTAH AND OURAY RESERVATION

TO THE

U.S. HOUSE OF REPRESENTATIVES

COMMITTEE ON EDUCATION AND LABOR

RE: H.R. 5190 THE INDIAN EDUCATION

AMENDMENTS OF 1984

The Ute Indian Tribe of the Uintah and Ouray Reservation, Utah, is in general support of H.R. 5190 as introduced by Representative Dale Kildee (D-Montana). We, herein, submit the following comments and recommendations pertaining to this Bill:

Section 2 - STANDARDS

a) We believe immunization standards are necessary to ensure linkage between Bureau/ Contract schools and the Indian Health Service as long as consultation with tribe and local school board is required.

b - c) We believe most tribes will pursue accreditation for schools voluntarily. Approval by Secretary should allow some flexibility. We question the term "Secretary of Education" on line three. We would prefer "Secretary" only, meaning Secretary of Interior/Director of Indian Education Programs. We prefer that this authority remain under the Secretary of Interior/DOIEP in order to insure that accreditation requirements will not be imposed at the expense of alternative or non-traditional forms of instruction which may be more appropriate/effective for Indian students but not meet or be in keeping with accrediting agency requirements. We recommend that provision be made for the possible establishment of a national Indian accreditation agency, an agency that would take into consideration differences in cultural ideology, non-traditional teaching styles and alternative forms of classroom/ non-classroom instruction.

Written Testimony
Committee on Education and Labor
April 4, 1984

d) This provision and accompanying legislative language is critical to carrying out the full intent of the law.

e) The Ute Tribe is supportive of the legislative language and intent of this amendment to the law. We recommend that this section be adopted as written. These provisions are necessary to insure that the BIA maintains its trust responsibility to educate federally recognized Indian children.

Section 3 - SCHOOL BOUNDARIES

d (1) and (2) Include language that "The Secretary shall provide evidence that consultation with the affected tribe and school board was carried out as required." We recommend that line 25 of page 7 through line 7 of page 8 be retained as written. "In no case shall the Secretary regard a public school attendance area as being exclusive if the Secretary determines, on the basis of past practices or reasonable evidence concerning future practices, that a local school district is unable or unwilling to provide full and equal service (as provided to all of its students for all activities) throughout the year or to provide programs that meet students' particular needs."

Section 4 - EDUCATION FUNCTIONS

We recommend that the following language be included immediately following sub-sections (a) through (d): "This section shall in no way be construed as relieving or severing the OIEP from other BIA responsibilities which include the education of Indian children, in the fulfillment of its treaty and trust responsibilities to Indian tribes.

The purpose of this recommended section is that we do not wish to allow a future separation of this service as an integral function of the Bureau. At the same time, we recognize the need for the OIEP to have a separation of authority for the purpose of rendering expediency and efficiency of services.

Written Testimony
Committee on Education and Labor
April 4, 1984

Section 5 - ALLOTMENT FORMULA

(a)(3) E through G — As previously recommended, we would recommend that costs for vocational education programs be included in the allotment formula.

Most importantly, we also recommend that consideration be granted for therapeutic programs similar to those offered at the Intermountain Indian School, Brigham City, Utah. Such programs would include: intensive counseling (individual and group); self-sufficiency training and preventive substance abuse programs. We consider these therapeutic programs to be most important in insuring the effectiveness of the regular instruction program in Bureau/Contract Schools. They have been completely overlooked to our knowledge.

(6)(B) — This section is not clear because it does not indicate how this allowance will be determined in the allotment formula nor the amount to be authorized to local school boards.

Section 6 - UNIFORM DIRECT FUNDING

This section is the most significant and meaningful part of the entire Bill. We recommend full consideration of the forward funding provision of this section as written.

Section 7 - APPEALS FROM ACTIONS OF SCHOOL BOARDS

Appeals to overturn the action of the local school board (section a) may also apply to agency school boards, if not already addressed in other sections.

We wish to thank Representative Kildee for these amendments which we believe will serve to strengthen the intent of P.L. 95-561 and insure improved educational opportunities for our children.

April 4, 1984

Forrest S. Cuch, Education Division Head
Ute Indian Tribe, Fort Duchesne, Utah

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WRITTEN TESTIMONY

SUBMITTED BY THE

UTE INDIAN TRIBE

OF THE

UINTAH AND OURAY RESERVATION

TO THE

U.S. HOUSE OF REPRESENTATIVES

COMMITTEE ON EDUCATION AND LABOR

RE: TITLE VII BILINGUAL EDUCATION ACT

The Ute Indian Tribe strongly supports the proposed amendment of section 722(a) which would allow Indian tribes or tribally sanctioned educational authorities to become eligible to apply for and receive Title VII funds directly from the U.S. Department of Education. We support the proposed amendment and accompanying language because the previous language was somewhat contradictory since tribally sanctioned non-profit organizations were eligible to apply for these funds but the tribal governments which sanctioned those organizations (to operate in their behalf) were restricted or denied this same opportunity.

Further, we believe that the proposed amendments (language) in no way interferes with the opportunities made available to public school programs, elsewhere in the Act, to apply for, receive and operate Title VII programs on behalf of the American Indian or Alaskan Native children already enrolled in these schools.

We have been informed that the National Association for Bilingual Education (NABE) is supportive of this proposed amendment, along with the National Tribal Chairmen's Association and the National Congress of American Indians, Inc. We join these groups in supporting amendments to the Bilingual Education Act which will strengthen the full intent of Congress to improve educational opportunities for all students served by this Act.

Submitted on April 3, 1984 by _____

Forrest S. Cuch, Education Division Head,
Ute Indian Tribe, Fort Duchesne, Utah

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Written Testimony
Committee on Education and Labor
April 4, 1984

Section 5 - ALLOTMENT FORMULA

(a)(3) E through G — As previously recommended, we would recommend that costs for vocational education programs be included in the allotment formula.

Most importantly, we also recommend that consideration be granted for therapeutic programs similar to those offered at the Intermountain Indian School, Brigham City, Utah. Such programs would include: intensive counseling (individual and group); self-sufficiency training and preventive substance abuse programs. We consider these therapeutic programs to be most important in insuring the effectiveness of the regular instruction program in Bureau/Contract Schools. They have been completely overlooked to our knowledge.

(6)(B) — This section is not clear because it does not indicate how this allowance will be determined in the allotment formula nor the amount to be authorized to local school boards.

Section 6 - UNIFORM DIRECT FUNDING

This section is the most significant and meaningful part of the entire Bill. We recommend full consideration of the forward funding provision of this section as written.

Section 7 - APPEALS FROM ACTIONS OF SCHOOL BOARDS

Appeals to overturn the action of the local school board (section a) may also apply to agency school boards, if not already addressed in other sections.

We wish to thank Representative Kildee for these amendments which we believe will serve to strengthen the intent of P.L. 95-561 and insure improved educational opportunities for our children.

April 4, 1984

Forrest S. Cuch, Education Division Head
Ute Indian Tribe, Fort Duchesne, Utah

BEST COPY AVAILABLE

PREPARED STATEMENT OF PETERSON ZAH, CHAIRMAN, NAVAJO TRIBAL COUNCIL, THE NAVAJO NATION, WINDOW ROCK, ARIZ.

The following comments have been prepared for submission by the Navajo Nation to the House Education and Labor Committee, Subcommittee on Elementary, Secondary and Vocational Education concerning H.R. 5190, The Indian Education Amendments of 1984. It is requested that these comments be included in the record of the hearing conducted by that subcommittee on April 9, 1984, in addition to the oral testimony of the Navajo Nation.

In preparing these comments, the Navajo Division of Education has endeavored to supplement its own analysis, and that of other professionals within the Navajo Nation government with the concerns, opinions and analyses of the educational professionals within the BIA operated and contract school systems within the Navajo Nation. Our concern in analyzing the proposed legislation has been to assure that the changes made in the existing Indian education laws enhance Indian control of Indian education, both at the tribal government and local school board level, and that the changes lead to a more efficient system of effective schools serving the unique educational needs of our Navajo children.

In presenting our comments, we will present first an overview of some major areas of concern which we have identified within the existing law and the proposed legislation. We will then provide a more detailed section-by-section analysis of the proposed legislation. We hope that the subcommittee and full committee will find these remarks useful in their efforts to improve the legal framework supporting Indian education within the BIA operated and funded system.

I. KEY ISSUES INVOLVING STANDARDS

It is our belief that the provisions of the Indian Education Amendments regarding standards for BIA funded or operated schools should be drafted to give the greatest possible encouragement to the development of tribal educational standards and to protect Indian tribes and local school boards from culturally inappropriate standards. With this fundamental goal in mind, we would recommend some changes in the provisions of the existing law and of Section 2 of H.R. 5190.

1. Tribal and Local Board Waiver and Substitution of Standards.—The existing law allows a tribe or designated local board to waive the BIA standards in whole or in part and replace them with nothing. The proposed law requires that when standards are waived, a replacement be proposed. We can see the importance of assuring that a vacuum is not created in regard to standards, however, we feel that in some cases it is appropriate to allow a tribe or designated local board to waive a standard without replacing it. This is particularly true in the case of a standard which is at odds with the culture and values of the particular community involved. Therefore, we recommend that tribes and local boards be allowed to waive standards without replacing them subject to the same review by the Secretary which applies to tribal substitute standards.

With regard to tribally adopted and local board standards which are developed as an alternative to the BIA standards, we believe that the law should be written to encourage the application of such standards to BIA schools. We believe that there should be a presumption favoring the appropriateness of such standards. We further recommend that in cases where tribally adopted or local board adopted standards are rejected by the Secretary under a claim that there is "good cause" for the rejection, the Secretary's decision not be final and unreviewable. Rather, it should be subject to explicit appeals procedures or to the appeals procedures contained in 25 CFR Part 2 for appeals to the Board of Indian Appeals. The question of the existance of "good cause" for rejection needs to be reviewable to protect against the arbitrary exercise of authority by the Secretary. Further, the presumption in favor of the appropriatness of tribal standards should require the Secretary to establish that he has "good cause". In the absence of such safeguards, the law requires the Secretary to be the judge of his own reasonableness. We fear that the law as written now and as proposed for amendment in HR 5190 may take away with one hand what it grants with the other.

We are also concerned that in related provisions of the Education Amendments, tribal standards be accorded equal status with BIA standards when those standards are adopted pursuant to the Act. This may require some technical review of the act and amendments to make certain that whenever the act makes a school subject to standards developed under existing Section 1121(b) or (c), it also includes Section 1121(d).

2. Relationship of BIA Standards and State Standards.—With regard to the relationship of BIA standards and state standards, it is our feeling, shared by many edu-

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cators within the Navajo Nation, that state standards should be an alternative to BIA standards rather than a floor under them. The reason for this is that the standards may not be comparable. It may not be possible to determine which standard is "higher" if the BIA and the state take different approaches to standards development. For example, the currently proposed BIA standards have been reviewed against the New Mexico standards and many of our educators have concluded that they are not comparable. They take very different approaches to many standards issues. We cannot say which is the "higher" standard. Schools within the BIA system fear that if they have to comply with both they will be under a conflicting system which will add to administrative confusion without improving educational quality.

3. Standards for Contract Schools.—A related concern regards the requirements of standards for contract schools. We recognize the deeply-felt desire of Congress to hold contract schools to an accountable standard. We agree that this is an appropriate Congressional goal. However, we do urge Congress to allow for such flexibility in the development of standards appropriate to contract schools as will allow and encourage innovation in educational approach. It is our experience that some of our most innovative and successful contract schools would find their programs at odds with the standards proposed by the BIA or required by the surrounding states.

We feel that the Act should establish more than one approach through which contract schools may meet the standards requirement. One of these would be adherence to BIA standards. Others would be adherence to state standards, adherence to lawfully adopted tribal standards or adherence to the standards of a recognized accrediting organization. In addition, we feel that where, pursuant to Section 1121(e) a contract school has developed an alternative or modified standards which has been subjected to appropriate BIA review through the contracting process, this alternative or modified standard should satisfy the requirement of the act. Any such modified standard must already be approved by the BIA before it is applicable. Therefore, the concern of Congress with accountability can be met, while valuable innovation can be encouraged.

We also recommend that the period for standards compliance for contract schools be extended to 5 years from the enactment of the amendments or 3 years from entering into an initial contract, whichever period is longer. This will give contract schools sufficient lead time for standards development or for modifications of staff and program. It will also give to new contract schools their initial contract period to come into complete compliance with the applicable standards. We feel that such time limits will be less disruptive of program than shorter time limits.

4. Effect of Failure to Seek Sufficient Funds.—We agree with the provision stating that failure to meet standards shall not be a basis for the Secretary's taking personnel action against an individual if the Secretary has failed to seek the needed funds. We would also recommend that failure to meet standards should not be a basis for failure of the BIA to renew a contract with a contract school if the Secretary has failed to seek the needed funds. In this light, we believe that provision should be made in the law for situations in which the Secretary seeks funds but Congress fails to appropriate them. We would recommend that in any case where funds needed to meet standards are not sufficiently appropriated, the Indian tribal government or a designated local school board should have the authority to priorities standards compliance. We do not believe such authority should reside in the BIA.

5. Immunization.—The educators with whom we have spoken are agreed upon the importance of an immunization program. However, they have raised a concern that a school immunization standard may cause the Indian Health Service to deem immunizations an education responsibility rather than an IHS responsbility. This could be a serious financial burden to schools. School representatives have recommended that the standard cover immunizations and vision and hearing screening. They also recommend, however, that the act contain specific language requiring IHS to maintain its current level of service to Indian children in regard to immunications and vision and hearing screening and specify that the Act shall not be interpreted in any way to reduce IHS's responsbilities.

II. School Closures and Consolidations

We are pleased to see specific provisions in the proposed act regarding procedures for school closures and consolidations. This has been an area of great concern to the Navajo Nation and to the local school boards and communities within the Nation. We believe that specific safeguards are required to assure tribal and community involvement and to avoid disruptive changes in school organization. Based upon our experience of "consultation" with the Bureau of Indian Affairs on matters such as

this, however, we believe that stronger provisions than those contained in the act are required.

It is our experience that words like "notice", "inform", "consult" and the like are often given a minimalist interpretation in practice. They do not assure to Indian tribes and local communities a meaningful involvement in the process regarding which they are to receive notice, be kept informed and be consulted. Therefore, we believe that the provisions of HR 5190 regarding "notice" to Tribes and local boards and regarding keeping them "informed" should be altered to require that affected Indian tribes and local boards be fully involved in the process of consideration and review of possible closures and consolidations from its inception and that any such consideration and review be undertaken in coordination with affected Indian tribes and local boards.

We are also concerned that there be some assurance that the procedures established regarding closures and consolidations shall not affect the rights of contract schools regarding contract approval and declination, retrocession, resumption, termination and reauthorization, but that the safeguards afforded contract schools be no less than those afforded BIA-operated schools under Part 3 of the Act.

Finally, we are concerned that a deadline for regulations implementing Part 3 be established.

III. Key Issues Involving Establishment of School Attendance Boundaries

We recognize that the establishment of attendance boundaries for day attendance at BIA schools is an important Congressional concern. In the absence of some regulation, concern has arisen about "headhunting" as schools within some large geographical areas seek to increase their enrollment at the expense of eachother. We recongize the need for attendance boundaries. However, we do caution Congress to recognize the multiplicity of factors, cultural and social as well as geographical which contribute to choices to Indian families as to where they will send their children.

1. Tribal and Local Board Involvement in Boundary Setting.—We applaud the provision of the Act which would give to Indian tribes an initial opportunity to establish satisfactory boundaries. We believe that this provision recongizes the importance of this issue to Indian tribes and the desirability of tribal initiative in this area. We would urge that boundaries established by tribes and local boards be given every reasonable legal presumption and protection.

We are concerned about the effect of the Act in situations in which a tribe or designated local board has not acted, or has seen its proposed boundaries successfully rejected by the Secretary. In such a case, the Act provides for the Secretary to establish the boundaries according to a variety of criteria. We feel that in such a case, the Secretary should be required to coordinate with affected Tribes and local boards in the determination of attendance areas. The fact that a Tribe has not establsihed its own boundaries or has had those boundaries rejected should not eliminate the requirement of consultation and coordination.

2. Establishment of Day Attendance Boundaries Within the BIA-Funded System.—We have received considerable input from our contract schools regarding day attendance boundaries. Comments from contract schools have urged that when day attendance boundaries are established, they be established for the entire BIA funded system, both BIA operated and contract and that the day attendance boundaries between the two kinds of schools be mutually exclusive. We concur with this recommendation. Contract schools have expressed a concern that their attendance areas enjoy the same protection from "headhunting" as BIA-operated schools.

We are also concerned about the preference for students continuing their education "in a single school" contained in Part 3, subsection (c)(3). This provision could justify using the establishment of boundaries as a way to favor K-12 schools over K-8 schools and K-8 schools over K-6 or K-3 schools. We do not believe that boundary-setting is an appropriate process for making such determinations. Rather, we would suggest that the establishment of boundaries permit a student to continue his education, to the greatest extent possible, at schools closest to home.

3. Non-Exclusive Attendance Areas Within the BIA System.—We believe that it is important to maximize day attendance of Indian children within the BIA system. At the same time, we realize that numerous geographical, social, economic and personal factors go into decisions about student attendance at a particular school and about the decision whether or not to seek boarding facilities for a student. We feel that it is important that geographic isolation not be seen as the sole or primary factor in regard to attendance at boarding school or residence in a bordertown dormitory. We also recommend that provision be made for non-exclusive attendance

areas for programs serving special need populations within the Bureau-funded system. This would apply not only to boarding programs but to special purpose day programs such as special education programs for hard to serve handicapped students, alternative schooling, etc.

4. Relationship of the BIA-Funded System and the Public School System.—A major concern of Navajo parents and educators is the question of parental choice of schools between the BIA-funded system and the public school system. Time and again, Navajo parents have expressed a concern that they be allowed to decide which system they wish to have educate their children. As a citizens of the United States and of the state in which they reside, Indian children have a constitutional right to an education in the state public school system. This right cannot be denied them by act of Congress or administrative decision of the Secretary. Likewise, we believe that every Indian child has a trust right to an education through the BIA-funded system. Therefore, we strongly urge Congress to assure that no exclusive attendance areas are established between the BIA-funded school system and the public school systems serving Indian reservations.

It is our experience that the BIA-funded system and the public school system are not comparable in a number of particulars. For example, in the Navajo Nation the proportion of Navajo teachers teaching Navajo children is highest in our contract schools, relatively high in the BIA-operated schools and quite low in the public schools. We feel this difference is significant and an appropriate element affecting choice of schools.

P.L. 95-561 and HR 5190 make provision for an Indian tribe or local board to develop and implement its own standards in regard to BIA operated and funded schools, subject to review by the Secretary. Indian tribes such as the Navajo Nation may employ this right to establish appropriate curriculum in the area of bilingual education, instruction in tribal culture, history and civics. Tribes will not have comparable authority to require such standards of public schools.

We feel that the choice of education between the BIA-funded system and the public school system is made upon many grounds, including social, cultural, language, economic, historical, geographical and educational factors. We urge Congress to permit the BIA-funded system and the public school system to overlap.

We do urge Congress to take the intent of Part 3, subsection (e) and reformulate it to assure that in no case shall the Secretary regard a school attendance area as exclusive and to assure that unless the Secretary determines that a local school district is in fact able and willing to provide full and equal services to Indian students throughout the school year, he shall assure that the needed services are made available to all affected students in BIA funded or operated schools. We believe that in addition to establishing day attendance areas covering the entire reservation, the Secretary has an affirmative duty to identify unserved or underserved student populations (including those dropped out of school) and providing for their needs.

IV. Key Issues Involving BIA Education Functions

The provisions of Section 4 of H.R. 5190 have generated a great deal of concern but less consensus than on other issues. Navajo educators and administrators agree that the present situation within the Bureau is cumbersome for educational programs, that lines of authority are often confused and confusing. There is a particular problem with the inability of educational administrators to control maintenance and repair activities and to effectively input facilities improvement and repair priorities. Thus no one we have consulted favors the existing system. Yet, experience has made many educators and administrators wary of major structural changes, when all the components of such a change are not clearly delineated.

Based upon all comments and discussions, we would recommend that the Director of the Office of Indian Education Programs be elevated to the status of Deputy Assistant Secretary, to assure the intent of Congress that he answer directly to theAssistant Secretary and to clarify his position within the Interior Department hierarchy. In addition, we would recommend that Congress assure that if Indian tribes, tribal organizations and educators are now to deal with only one entity within the Department of Interior in regard to education and related functions, that the entity so designated possess all necessary related functions and authority. What we want to avoid is finding some function falling between the cracks with OIEP lacking authority and the rest of the BIA refusing to act because of OIEP's exclusive juriadiction over education.

We also recommend that education contracting be centered at the Area level while functions such as technical assistance and support services remain centered at the agency level. This would avoid conflict of interest situations in which an agency

is asked to contract over to a tribal organization a school, program or function which agency personnel wish to retain under their own control. If such a division is unacceptable to other tribes, we would request that such a division of function be specified for the Navajo Nation. There are 5 agencies within the Navajo Nation and one Area. The Navajo Tribal government maintains an active oversight relationship to education contracts authorized by the tribal government. This oversight function can best be exercised in relation to the one Area office located in Window Rock, capital of the Navajo Nation, rather than in relation to 5 agency offices dispersed throughout the reservation.

We recommend that subsection (c)(2) of Part 4 be enlarged to specify that the agency education office shall provide all services, technical assistance and support functions for education programs in the areas of curriculum, procurement, budgeting, personnel, finance, housing, and property management.

We do commend the provision of the act placing facilities management within OIEP. This is a change which has been very much needed within the Navajo area.

V. Key Issues Involving the Allotment Formula

We have felt for some time that the allotment formula needs revision to take account of the real costs of operating small schools in isolated areas and to take account of the special costs associated with day attendance on the reservation. The current formula does not take into account some of the special services required for our day schools. For example, some students who live close enough to a day school to attend on a day basis most of the time, cannot travel between school and home when bad weather makes the unimproved clay dirt roads impassable. For these students, temporary boarding arrangements must be provided. Otherwise the student faces the choice of attending boarding school or missing a significant period of school. The ISEF criteria do not provide for temporary boarding arrangements. Many day students need access to morning showers, clothing, supervised after school study areas and the like to accommodate the requirements of a contemporary education and the realities of their rural homes. These special services need to be taken account of in the formula.

Isolated schools also have special service costs. Some schools must fit a school nurse and medical transportation into the school budget because there is no medical service reasonably close to the school.

Based upon these consideration, we recommend specific language in Part 5 of HR 5190, in addition to the language already there including as specific factors in the formula temporary boarding arrangements in support of day attendance, costs for special services provided in support of day attendance, and cost for special services or programs required by the health and safety needs of the students.

An additional area of concern in the allotment formula is the cost of school board meetings and activities. Concern has been expressed by a number of schools that a formula may reward inactive boards and penalize active boards. Within the BIA school system there is a wide range of board involvement in the running of the school. The Navajo Nation supports maximum local board control over Navajo education. Therefore we are concerned that any formula be adequate to pay the meeting expenses of those active boards which exercise genuine management authority over their schools.

Representatives of our contract schools have pointed out that their boards have greater legal authority over and responsibility for school operations than boards of BIA-operated schools. They express a concern that the formula may fail to reflect the time and expense in exercise this greater authority. They have requested assurance in the law that they may continue to include such expenses in their computation of administrative in indirect costs to make up any difference between the funds provided by formula to all boards and those required for contract operation of the school by a local board.

VI. Key Concerns Involving Uniform Direct Funding

This part provides for forward funding of school operations. We are very pleased to see this provision. Forward funding has been a goal of the Navajo Tribe for BIA educational programs for some time now. We must confess, however, to being a little confused by the language of this part. We would recommend that it be clarified so that it will not be subject to misinterpretation in its implementation.

Local school personnel also recommend that the date of the first publishing of allotment be set at April 1 rather than July 1. With forward funding, the allotment amounts should be known by this date. Publishing allotments at this time would allow schools to plan for the coming school year while personnel, students and par-

ents are all available. It is acknowledged, however, that even July 1 is a great improvement over the current situation.

We have had some difficulty interpreting Section 6(3) of this part (page 12, lines 21-25 and page 13, lines 1-2). We would request that this section be clarified to indicate if this is an amount that can be spent in advance of the fiscal year, the total amount available for certain expenditures, or has some other meaning.

VII. Key Concerns Regarding Appeals

This section has been greatly rewritten. It now is much more specific about the grounds for overturning the decision of a local school board. We applaud this change. However we would recommmend that the law be amended to contain specific language about the appeals rights of local school boards in cases of disagreements with the school supervisor or the agency superintendent.We feel that it is important to the exercise of Indian control over Indian education that the local Indian school board enjoy the full range of administrative and judicial remedies in support of its authority over local Indian education.

VIII. Other Areas of Concern

Two other areas of concern which have been conveyed to us by contract school administrators concern the question of audits and voluntary services. Contract school administrators felt that the question of audits for contract schools should be, and is addressed in the contract. Therefore, the requirement in Section 9 of the bill for audits by the Inspector General should apply only to Bureau operated schools.

Contract school representatives also questioned the language in Section 11 of the bill. They believe that they should have the authority to accept voluntary services on their own behalf, without the intervention of an officer or employee of the Bureau. We agree with this position. We believe that the board of a contract school has full authority to act in this area, consistent with the terms of its contract.

IX. Conclusion

In conclusion, we believe that HR 5190 contains many beneficial provisions and represents a much needed rethinking of some of the provisions of P.L. 95-561, Title XI. We recommend, however, that the bill be carefully reviewed and revised by the subcommittee and full committee to clarify its language, and to make the most beneficial use of the amendment process to improve the administration of the law. We urge that the goal of maximum Indian control of Indian education be kept in the forefront in deciding on the appropriateness of suggested revision and amendments to the law.

Appendix to Testimony of Navajo Nation on H.R. 5190

Section-by-Section Analysis of Legislation

This analysis is provided in addition to the overall testimony presented by the Navajo Nation to the House Education and Labor Committee Subcommittee on Elementary, Secondary and Vocational Education regarding H.R. 5190. In this appendix we have attempted to suggest additions, deletions and alternative wordings which we believe would strengthen H.R. 5190 and improve the conduct of Indian education within the system funded by the Bureau of Indian Affairs. Because of the shortness of time, this analysis has been developed rapidly. The language changes suggested here are not secred. They are for the purpose of indicating in more detail parts of the existing and proposed law which we believe would benefit from some revision. In addition, in some cases we have been unable to agree upon revision language, but we have some concerns about the language of the existing or proposed section. In those cases, we merely cite our concern, without proposing substitute language. We would request the subcommittee and its staff to consider these areas as well and, if our concern is accepted as valid, develop language which the subcommittee considers appropriate.

Section 1

We have proposed no changes for this section.

Section 2

Subsection (a), p2, line 16.—Change sentence to read: " . . . on immunization for childhood diseases and vision and hearing screening, including provision for in-school immunization and vision and hearing testing, where necessary. This section

shall not be interpreted in any way to limit the responsibilities of the Indian Health Service for the health care of Indian children attending BIA-funded schools, including responsibilities in regard to immunization against childhood disease, and vision and hearing examination and treatment, nor may the Indian Health Service rely upon any standard developed pursuant to this section to deny any services to any Indian person.

Subsection (b), page 2, line 20.—Change the sentence to read: "The tribal governing body or designated school board shall thereafter submit to the Secretary a rationale for the waiver of the standard, or, if alternative standards are to be implemented, alternative, standards that takes into account the specific needs of the tribe's children. Such revised standards shall be established by the Secretary unless specifically rejected by the Secretary in writing to the affected tribes or local school board. Rejection of a tribal standard by the Secretary is a reviewable decision of the Secretary, with the scope of review to include a determination as to whether the Secretary can demonstrate that he has good cause for his rejection of the standard."

Subsection (c), page 3, line 1.—After line 1, insert: 'Amend subsection (e)(1) to read: "The Secretary, through, the contracting procedures, shall assist school boards of contract schools in implementation of the standards established under subsection (b), (c) *or (d),* if the school boards request that such standards, in part or in whole, be implemented.' "

Subsection (c), page 3, line 2.—After lien 2, insert: 'Amending the third sentence thereof to read: "At the request of a contract school board, *and subject to the requirements of the authorizing tribal governing body,* the Secretary shall provide *or approve alternative or modified* standards for the standards established under subsection (b), (c) *or (d)* to take into account the needs of the Indian children and the contract school.' "

Subsection (c), page 3, lines 5 through 13.—For the language in this subsection, substitute the following: "(2) Within 5 years of the enactment of this Part or within 3 years of the initial contract for provision of educational services under the Indian Self-Determination and Education Assistance Act, whichever period is longer—

(A) each such school shall (i) be in compliance with the standards precribed under subsection (b), or (ii) be in compliance with the standards of the state in which the school is located, or (iii) be in compliance with standards adopted pursuant to subsection (d), or (iv) have implemented the alternative standards adopted pursuant to subsection (e), or (v) have obtained accreditation, or be a candidate for accreditation, with one of the accrediting agencies recognized by the Secretary of Education or the State in which it is found; and' "

Subsection (c), (page 3, line 17.—Insert a "." after the word "schools" and delete: "comparable to those used by Bureau schools."

Subsection (d), (page 3, lines 20-22.—Revise this language to read as follows: "Failure to implement or meet such standards shall not serve as the basis for the Secretary or his designee taking any personnel action against any individual or refusing to enter into, continue or renew any contract . . ."

Subsection (d) page 4, line 3.—At the end of the sentence, add: "In any case where compliance with standards applicable to a particular school is rendered impossible because of inadequate funds, the tribal government or, if designated by the tribal government, the local school board may establish priorities for standards compliance."

N.B. We recommend that some consideration be given to the problem of standards compliance in situations in which the Secretary seeks adequate funding, but Congress fails to fund at that level.

Subsection (e), pages 4 and 5.—Our testimony expresses a concern that contract schools be assured the full range of protections which they currently enjoy under P.L. 93-638 in regard to declination to contract or recontract, retrocession resumption and termination of contract. In addition, we wish to be assured that contract schools shall be afforded no less protection than that afforded to BIA-operated schools in regard to proposed closures, consolidations or program curtailment. We have been unable to agree on what language is needed to achieve this result. We request the subcommittee to determine what language is appropriate to accomplish this result.

Subsection (e), p. 4, lines 7-10.—This section needs to be revised to state: "(1) Except as specifically required by statute, no school operated by the Bureau of Indian Affairs on January 1, 1984, or thereafter, may be closed or the program curtailed, or jurisdiction transferred to a public school district of any state unless done according to the requirements of this subsection."

Subsection (e)(2), page 4, lines 11-14.—There should be a deadline for development of regulations implementing this subsection.

Subsection (e)(3), page 4, lines 15-24.—This section should be revised to read: "(3) Such standards and procedures shall require that, whenever closure or consilidation of a school is under consideration or review by any division of the Bureau or the Department of Interior, the affected tribe, tribal governing body, designated local schoolboard and parents will be notified as soon as such consideration or review begins and shall be fully involved in the process of such consideration or review. Copies of any notices or information regarding consideration or review of a proposed school closure or consolidation shall, in addition, be promptly transmitted to Congress and published in the Federal Register."

Section 3

Page 5, line 23.—Somewhere in this section, we believe there should be a requirement that the Secretary conduct a school census in conjunction with the establishment of attendance boundaries and periodically thereafter. This is necessary to assure that the schools have or acquire the physical capacity necessary to adequately house the students who will be included within the attendance area.

Page 6, after line 11.—A subsection is needed between proposed subsection (b) and proposed (c) stating:

"In cases in which the tribal governing body or designated local school board does not establish boundaries within the time prescribed, or in which the boundaries so established are validly rejected by the Secretary, shall establish the required geographical attendance areas. In establishing these areas, the Secretary shall act in consultation and coordination with affected tribal governing bodies, school boards and communities."

N.B. We should also recommend a good strong definition of "consultation" and "coordination" to clarify that these words require actual involvement in the planning and decision-making process.

Subsection (c), page 6, line 12.—This line should read: "(c) In any case where more than one school operated or funded by . . ."

Subsection (c)(1), page 6, lines 15-17.—This subsection should be revised to read: "(1) in the case of day school programs serving the same populations, shall not overlap and shall, together with schools operated under contract with the Bureau, cover the entirety of such reservation;"

Subsection (c)(3), page 6, lines 20-21.—This subsection should be revised to read: "(3) shall, to the greatest extent possible, permit a student to continue his or her education at schools closest to home; and . . ."

Subsection (c)(4), p. 6, line 23-p. 7 line 1.—This subsection should be revised to read: "(4) with respect to residential dormitory programs, and programs serving special need populations; may be established to cover a non-exclusive area; as required by reason of such factors as social or educational need or isolation, or any combination of such factors."

Subsection (d)(1), page 7, line 4.—This line should be revised to read: "(1) determine attendance areas for Bureau operated or funded . . ."

Subsection (d)(2), page 7, lines 11-12.—This subsection should be amended to read: "(2) coordinate determination of such attendance areas with affected tribes and local boards."

Subsection (d)(4), page 7, lines 14-24.—This subsection should be revised to read: "(4) coordinate such attendance areas with the school attendance areas of public schools in the vicinity, taking into account the wishes of the tribal governing body and local school boards concerned, but such public school attendance areas shall not be regarded as exclusive."

Subsection (e), page 7, line 25—page 8, line 7.—This subsection should be revised to read: "(e) In no case shall the Secretary regard a public school attendance area as being exclusive. Unless the Secretary determines, on the basis of past practices or reasonable evidence concerning future practices, that a local public school district is able and willing to provide full and equal service (as provided to all of its students for all activities) at least equivalent to that available in adjacent Bureau funded or operated schools, throughout the year, or to provide programs that meet student's particular needs, the Secretary shall assure that such services are made available in sufficient quantity to meet the needs of all affected students in BIA funded or operated facilities.

Subsection (e), page 8, after line 7.—New language should be inserted to read: 'Sec. 1125(b) is revised by amending its first sentence to read: "Within one year of the date of enactment of this Act, and at each time thereafter that the annual budget request for Bureau educational services is presented, the Secretary shall submit to the appropriate committees of Congress a detailed plan to bring such fa-

cilities into compliance with such standards and to accommodate the students located within the facility's attendance area."

Section 4

Subsection (a), page 8, lines 17-18.—This subsection should be amended to read: "The Director of the Office, (whether permanent or acting) shall hold the position of Deputy Assistant Secretary and shall report directly and solely to the Assistant Secretary for Indian Affairs.".

Subsection (b), page 8, lines 20-25.—We have expressed a concern with this subsection in two particulars. We are concerned that, particularly for the Navajo Nation, education contracting responsibilities not be located at the Agency level. We would seek contracting responsibility at the Area level. In addition, we are concerned with the entire section that great care be taken to assure that there are no functions left unaccounted for in regard to education programs. We have not developed specific language to address these two concerns.

Subsection (c)(2), page 9, lines 2-4.—This subsection should be revised to read: "(2) provide all services, technical assistance and support functions for education programs in the areas of curriculum, procurement, budgeting, personnel, finance, housing and property management."

Section 5

Section 5, pages 10-11.—We believe that a deadline should be established for the secretary to incorporate the requirements of this section into regulations.

Subsection (a), page 10, line 3.—This subsection should be revised to read: '(a) Section 1128(a)(1) and (a)(2) are amended to read: "In establishing such formula, the Secretary shall (1) consider the number of Indian students served and the size of the school; and (2) make provision for special cost factors, such as . . ." and by . . .' / then include the rest of the language of 5(a).

Subsection (a)(3)(F), page 10, lines 11-13.—The subsection should be revised to read: "(F) the costs of boarding arrangements, including temporary boarding arrangements in support of day attendance, where determined necessary to a tribal governing body or designated local school board."

Subsection (a)(3), page 10, after line 15.—Add two new subsections to this subpart, to read:

"(H) costs for special services provided in support of day attendance; and

"(I) costs for special services or programs required by the health and safety needs of the students"

Subsection (b)(2)(B), page 10, line 24.—This line should be amended to read: "(B) shall receive an equal and adequate amount as an allowance . . ." In addition, we would request the subcommittee to consider ways to make provisions for the differing workloads of different school boards. It is important that this provision provide funds to encourage active school board involvement in school administration rather than stifle it by excluding other sources of funds for school board activity while itself providing inadequate funding.

Subsection (b)(2)(B), page 11, line 2.—This line is grammatically unclear and should be revised to say what the drafter meant: either funds for meeting expenses or funds for the expenses of conducting meetings.

Subsection (b)(3), page 11, lines 5-13.—This subsection should have a specific provision which would allow contract schools to budget from this source for the additional costs associated with their schoolboard activities in overseeing the school which are not paid for out of funds generated by Subsection (b)(2)(B).

Section 6

We are very pleased with the intent of this section and very concerned about its wording. We are concerned that it may be subject to misinterpretation and to uncertainty about interpretation. We would recommend that it be redrafted for clarity.

Subsection (A)(2)(B)(i), page 12, line 12.—Change July 1 to April 1.

Subsection (A)(3), page 12, line 21—page 13, line 2.—This section is particularly confusing. Clarity is needed to determine if this subsection allows the school supervisor to spend this amount in advance of the school year, spend it without reference to confirmation by a higher level in the Bureau, or limits his spending ability.

Section 7

We have recommended that specific language be developed in this section specifying appelate rights for local school boards aggrieved by an action of decision of the school supervisor or agency superintendent. We have not developed language for this section at this time, but would request Subcommittee staff to develop appropriate language.

Section 8

We have no language recommendations for this section.

Section 9

Subsection (b), page 16, lines 13 and 14.—We recommend changing the phrase "Bureau schools" to "Bureau-operated schools" in each line. Language could also be added to the end of the subsection stating: "Audits of contract schools shall be governed by P.L. 93-638 and the applicable regulations, as well as contract provisions applicable to a contract school." Audits are already provided for under that law, its regulations, and standard contract provisions.

Section 10

No language change recommended for this section.

Section 11

Section 11, page 17, line 8.—Either strike the words: "and contract schools", OR, if the intent is to allow general acceptances of voluntary services at the Office or Agency level, add a final sentence stating: "In addition, contract school boards may accept voluntary services on their own behalf, directly or through the actions of their designated agents."